

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MAY 26, 2009**

Approved: 9/8/09

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 8:30 a.m., Tuesday, May 26, 2009, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Mr. Hedani: The Maui Planning Commission meeting of May 26th will come to order. Welcome and good morning everyone. We'll open the floor up to public testimony at this time. We'll take testimony now and on any agenda item when that item comes up for consideration. Public testimony is limited to three minutes. And if you testify at this time you will not be allowed to testify again when the agenda comes up, the agenda item comes up unless new or additional information will be offered. We have quite an extensive list of people that have signed up for testimony this morning. So without further ado at this point I'd like to go ahead and take the first testifier Mr. Mike Fergus. If you could step to the microphone, state your name for the record and you have three minutes.

The following individuals testified at the beginning of the meeting:

Mike Fergus - Item B-1, Council Resolution No. 09-22
Clyde Sakamoto - Item B-1, Council Resolution No. 09-22
Howard Hanzawa - Item B-1, Council Resolution No. 09-22
Gary Smith - Item B-2, Council Resolution No. 09-21
Patrick Boyd - Item B-3, John and Sandy Camou, SUP
Reverend Kevin St. John - Item B-3, John and Sandy Camou, SUP
Gary Hogan - Item B-2, Council Resolution No. 09-21
Tom Bell - Item B-2, Council Resolution No. 09-21
Kathy Inouye - Item B-2, Council Resolution No. 09-21
Bill Rees - Item B-2, Council Resolution No. 09-21
Mike Nobriga - Item B-1, Council Resolution No. 09-22
Tom Welch - Item B-2, Council Resolution No. 09-21
Claudia Ledesma - Item B-3, John and Sandy Camou, SUP
Jeff Halpin - Item B-2, Council Resolution No. 09-21
Jack Kean - Item B-1, Council Resolution No. 09-22
Alvin Pelayo - Item B-1, Council Resolution No. 09-22
Anthony Plitt - Item B-2, Council Resolution No. 09-21
Eric Taniguchi - Item B-1, Council Resolution No. 09-22 & Item B-2, Council Resolution No. 09-21
Sandy Baz - Item B-1, Council Resolution No. 09-22
Bob Hansen - Item B-2, Council Resolution No. 09-21
Randy Endo - Item B-1, Council Resolution No. 09-22 & Item B-2, Council Resolution No. 09-21
Lon Briggs - Item B-1, Council Resolution No. 09-22
Tom Cerizo - Item B-1, Council Resolution No. 09-22
Doreen Gomes - Item B-1, Council Resolution No. 09-22
Tom Welch - Item B-1, Council Resolution No. 09-22

Their testimony can be found under the item on which they testified on.

Mr. Hedani: We will move to the first item on the agenda. Director.

Mr. Hunt: Your first item involves the Planning Director transmitting Council Resolution No. 09-22 containing a draft bill to amend Section 19.24.020 and 19.26.060 relating to the elimination of stacking of B-1, B-2 and B-3 uses in the M-1 Industrial District and M-2 Heavy Industrial District as well as eliminating apartment houses from the list of uses in the M-1 Light Industrial District. The file number is RFC 2009/0029 and Joe Alueta is the planner assigned to this.

B. PUBLIC HEARINGS (Action to be taken after each public hearing.)

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 09-22 containing a Draft Bill to Amend Section 19.24.020 and 19.26.060 relating eliminating the stacking of B-1, B-2, and B-3 uses in the M-1 Light Industrial District and the M-2 Heavy Industrial District as well as eliminating "apartment houses" from the list of uses in the M-1 Light Industrial District. (RFC 2009/0029) (J. Alueta)**

Mr. Joe Alueta: Good morning Mr. Chair and Commissioners. I'm your Administrative Planning Officer. As some of you know there's some ways to get a bill done or a change to the Title 19 done and that you can have – it can be generated by the department which a lot of times you'll see me come before you for amendments to Title 19 or you'll see what we call a Resolution coming down from Council. When you have a resolution done, normally resolutions are reserved for special items and when we get them they're just quick turn around and for the Planning Department for many of the commenting agencies it's kind of a like a damage control. We kind of see what does the bill does, what unintended consequences can it have and try to get back comments. If we have additional time we'll try to – we have in the past try to come up with an alternative bill to the resolution that we can present to you. Again, the first bill that you, or resolution that you have before you is 09-22 which is the provisions for eliminating stacking primarily within the Light and Heavy Industrial areas.

It deals with – or called pyramid zoning and just to give you a quick background. In some of our zoning categories such as the heavy industrial – M-1 and M-2 industrial areas they'll have a catchall phrase under the allowed permitted uses and they'll say just generically any use allowed in the B-1 or B-2 or B-3 District or Apartment District or whatever and that's called rather than relisting everything that's in a previous zoning section of Title 19. Title 19 currently operates where it's – it has to be listed to be an allowed use. If it's not on the list, if it's excluded from the district, it's not a permitted use within that zoning category. And so to speed things along in some areas where they felt would be compatible they would just do what they call a pyramid or stacking, it would just arbitrary list the district and say anything allowed in this other district it's okay to have in this district.

We understand – I have a really short memo, so hopefully some of you have read it. I think the primary focus of it, you know, was the elimination or loss of some of your basic industrial dead storage lands there out where the Costco or at the time it was Sam's Club was going in there. Costco, where Kmart went in, some of you remember, F&M Construction, you had Fong Construction located out there and you had an intrusion of a lot retail type uses into our heavy industrial type zoned lands. As a result of that, you also had when these people who relied on

cheap dead storage land, you had a offset effect where you were starting to see a lot of State Special Use Permits and Conditional Permits for some of our substandard or E-rated ag lands. So you saw the industrialization of Waiko Road in Central Maui.

I think the County has seen some of that and when they have had new zoning categories come – new industrial zones come in such as the Earl Stoner's out in Mokulele and also you had Fong's when he came in for his zoning. The Council as well as this commission has seen that we don't want to see a repeat of that and they've established conditions. That's an appropriate way and that's the way we've been doing it and for the long time and the County, the Planning Department does view, we feel that there needs to be a third category for industrial zoned lands that has very limited amount of or accessory use of office and maybe some retail, but the predominant use needs to be this relatively inexpensive dead storage for truly industrial type uses as well as noxious uses that are away from your typical residential areas.

However, the current – and so we understand where this resolution came from trying to resolve this ongoing problem of displacement of industrial type uses with more of a commercial and retail type uses within our industrial areas. However, the department as obvious by our recommendation for the bill to be filed, it would create a huge amount of non conformities over 700, 800 lots. And again, with apartments, you have apartments such as the brand new MCC dormitories. That's in the M-2 Industrial District. Kaahumanu Shopping Center is M-2 because that used to be the cannery. I'm sure you've heard testimony today about the other areas, of their particular need that they would become a non conforming use.

You know, in the M-1, the Light Industrial District it's kind of your – it's kind of a nice mixed use zone. It's kind of a car oriented mixed use zone instead of a pedestrian oriented mixed use zone, but it does work and as you can see it's a bread and butter for a lot of many small start up businesses and entrepreneurs. And so, again, as far as comments you can see that we didn't really get much comments on this bill from a lot of the agencies. And again, the department feels that at this time it should be filed and that's our recommendation. This is for the first one, 09-22 resolution. Are there any questions?

Mr. Hedani: Questions for staff? Commissioner U'u.

Mr. U'u: So what options we have? First of all, my mom would be mad at me if Sam Satos would be non conforming. I would not go home, I would not look at her in the eye. When you say to be filed, what options we have? Filed, meaning what?

Mr. Alueta: We recommend that they start all over. And at this time we would recommend that during the General Plan and community plan process you try to identify areas that could establish this new type of industrial district. Because I believe that there is – from a land use planning standpoint there is a need for dead storage, for cheap dead storage. I mean, that is why, as a planner I process numerous special use permits for dead storage areas such as Fong Construction, for Diversified Machinery, for all of the areas that needed to have some type of storage. And the first place they look is that where can I get cheap land and they look at the ag land and that's not an appropriate place to look. And at the same time, you're having – using the special use permit, conditional permit bypasses your community plan. It's the tail wagging the dog and you need to have a community plan and General Plan that says this is where we want our industrial zoned lands

and this is the type and we need to also protect those type of industries, the construction industries, and you know, BFI that require storage of empty trash containers that really if you talked to some of those where they're located now, they get a lot of pressure because you know, they're not exactly – I mean they're noxious uses. And we're trying to avoid having all of Maui, the industrial turning into Carmel. You know, ...(inaudible)... like to say, we need a place where the ugly people can go, where the stinky industries and the ...(inaudible)... okay, and not be harassed because that's part of the bread and butter of Maui County.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, if this were to be filed by the Council, will the department be willing to initiate a bill creating say an M-3 or some kind of mechanism to create the baseyard use and noxious use in the heavy industrial areas that we need in suitable locations?

Mr. Alueta: Yes, we will have a draft ordinance. So you have – we feel that there is a need for one and we've already started during our Title 19 update, and so you're going to start seeing that as part of – we're starting with the residential district and you're going to see that fairly shortly and then we're moving through the other business districts and you're also going to see it in the industrial area as a – for the development standards for an M-3 district. I think that – and then during the General Plan and community plan process, the locations of those new M-3 districts can be identified during the General Plan – specifically during the community plan process which again, this body will review. And then at the same time, you can potentially fine tune that during the community plan process.

Mr. Starr: And those will affect uses moving forward but will not make life difficult for people with existing uses, is that correct?

Mr. Alueta: Unless someone comes in and specifically zones that for that use.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I want to ask some – since I know Joe knows economics, I'd like to ask some questions about market value and tax revenues. From the market value, B-1, B-2, B-3 zoned land gets higher rent than M-1, M-2 in general, is that correct?

Mr. Alueta: I think that, I'll defer to a real estate agent but from what you see, what people apply for, right, the more uses you add to a specific zoning district, the higher value that land has. And that is why the most valuable land on Maui tends to be the M-1 and specifically M-2 because you have gamut, you can do anything. You can everything – I mean, th M-1 allows you everything from B-1, B-2, B-3 to an apartment to manufacturing, to light manufacturing. So in that aspect, if you narrow the scope, right, narrower the uses, the less potential buyers. Then you have your standard supply and demand constraint within the community plan. But I think from just looking at the aspect of – if all things are equal and you're just looking at uses. The more uses you add, the more value. So from my aspect M-1 tends to have the most value. But I know real estate agents bear that out.

Mr. Mardfin: Some of the stuff I read, but it was put as an example, so I don't know how accurate it is that for commercial space it tends to rent for \$2 a square foot and perhaps and for more

traditional industrial use it rents for something like a \$1 a square foot, is that generally accurate? Commercial space rents for a lot more? I see my fellow Commissioner Starr is nodding his head, so I'm going to take that as a yes from him.

Mr. Hedani: Could you hold the third question?

Mr. Mardfin: Okay.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Mr. Alueta, I understand that you're just a spokesperson for this Maui County Council proposed type of bill, the change. I was wondering if we peeled the onion back what was the driving force here? To simply the Code or was it to restrict or delineate or remove commercial uses in this manufacturing area?

Mr. Alueta: I can only tell you what I talked to the staff member who helped with the – the council member who's no longer on the council. It was written by a council member that's no longer on the council, but the reso carried forward. So in talking with Council Services staff, it appears that he was – the council member at the time was just trying to say, if it's going to be industrial it should be industrial. We should put industrial uses there. If you want the uses, other uses in there then they should list the uses in there rather than just doing the generic B-1, B-2, B-3. They should say what uses they want to have in there. And I think he was just trying to call a spade a spade at that point. And so we understand what the – but that's all I can surmise.

Mr. Shibuya: Okay, because I see this process circumventing the community inputs. See the problem here is that I have the Wailuku-Kahului Community Plan which is adopted in 2002, in that it allows for commercial use, mixed use in this area, in all of the areas. So all of a sudden this is coming out from the County Council. And then at the same time, we have the General Plan Advisory Committee coming up with the General Plan and that's talking about mixed uses. So we've got a disconnect here and I just wanted to find out the rational between these two forces. It's very embarrassing if this body here approves this. I, for one, right now, I'm going to tell you I'm going to disapprove it as far as I'm concerned. Thank you.

Mr. Hedani: Any additional questions for staff? Commissioner Mardfin.

Mr. Mardfin: Real property tax. I know single family dwellings gets taxed at one rate. Hotels get taxed at a different rate. Are commercial space and industrial space taxed differently? Or does it get the same?

Mr. Alueta: I do not know the tax rates. What I will tell you is that from the Tax Office, doesn't necessarily mean what your zoning is. They tax you on what you're using it for than what your use is. You can have a industrial zoned land but if you have a commercial space, they'll tax you at a commercial rate.

Mr. Mardfin: Okay, so it's taxed on how it's actually being used not what the underlining zoning is?

Mr. Alueta: Right.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Guard.

Mr. Guard: So if this is filed and how you're saying you're proposing either an ...(inaudible)... or something that Planning Department is working on now. So potentially if this gets filed, those comments are obviously being taken in by staff now that will be mixed in. So it sounds like we're just trying to alleviate the fears of industrial uses being pushed out by either more big box, etc., instead of worrying about property tax rates.

Mr. Alueta: Yeah, and again, I think that this commission as well as the Council has been cognizant of the fact that commercial uses have pushed out some of the heavy industrial type uses from the existing industrial zoned lands. And so when the new industrial zoned lands come in, they've been trying to either condition it for – specifically for the use of industrial type uses. And like I say, the most examples that we have are again, Waiko Road we had Fong Construction's project as well as Earl Stoner's one which is probably the most extreme which is a large area and it basically prohibits retail. But if you go out there, I mean, you can't have a restaurant unless you go back to Council. It's a true industrial. I mean, that's a very truly industrial yard out there. You need those types. As to what percentage, you know, of true industrial and as well as this mixed use, I think Kahului-Wailuku has acted as that industrial mixed use and it's ebbed and flowed based on the market conditions from retail, restaurant, to more of an industrial and it's played that part pretty well I think.

Mr. Guard: So just from moving forward and trying to create a true industrial without mixing, I mean, a lot of the Wailuku Community Plan area business in general is in industrial.

Mr. Alueta: Correct. And that's what we don't want to have. You know, if the Council wants to go back where you have apartments like MCC – there's a potential where they could rezone that property because it's obviously going to be an apartment complex for quite a while and again, you know, that's one option that they could do.

Mr. Hedani: Commissioner U'u.

Mr. U'u: If it's in order, I'd like to make a motion to file.

Mr. Starr: We need testimony.

Mr. Hedani: Can we finish up with questions if anybody has any other questions at this point? Commissioner U'u.

Mr. U'u: Being on the subject of questions, it seems to me that the commission possibly is going to deny acceptance which I can see why. And we've been told that we have an opportunity to file. And I just wanted to know any other options we have to make the strongest impact to the Council stating our reasons would be to what? And just a short answer, not a long one.

Mr. Hedani: Joe.

Mr. Alueta: I think one of the primary reason is you're going to create a huge amount of non conformity and you want to allow – and you agree, I guess, with the department's position that there should be a third industrial category to resolve, to protect some of these industrial areas, pure industrial areas, but that should be handled, you know, in the future going forward and also with the General Plan and community plan process.

Mr. Hedani: Joe, for clarification purposes the commission is making a recommendation back to the Council it does not have yea or nay power relative to this particular bill, right?

Mr. Alueta: That is correct.

Mr. Hedani: Additional questions for Joe? Commissioner Mardfin.

Mr. Mardin: You mentioned noxious uses, and that – it would make sense to have those kinds of uses in a pure industrial and M-3 if you will, somewhere else. You said, you wouldn't want it to be agricultural land because we're trying to protect agriculture. I'm not asking exactly where something would be, but do you have any – you or the department have any ideas on where you would locate such M-3 lands?

Mr. Alueta: I think you're going to have to acquire or be some type of agricultural lands and primarily it's going to be non, hopefully non prime ag land. And again, that's going to have to become – the preferred option is have it during the General Plan and community plan process and not where the dog is wagging tail and not the methodology in which we're currently doing it and that is through state special use permits and conditional permits. And so I would just, as a planner I have my opinion and every other planner has their opinion of where. So I would rather let the community during the General Plan and community plan process say where they would want to have that type of uses located.

Mr. Mardfin: Thank you very much.

Mr. Hedani: Additional questions for staff planner Alueta? Commissioner Shibuya.

Mr. Shibuya: Is it a possibility that the problem is arising because we are short in inventory of small industrial use areas? Is this where the problem is coming?

Mr. Alueta: I think it's – well, I think primarily it's like you have commercial uses – you might be short on the commercial type of uses and therefore, people are moving into what they call, you know, the industrial areas which tend to be a little cheaper in the first go around and then convert them into retail type uses. But I think, I'm not positive on how the General Plan and the community plan when they do the inventory, I think they account for light industrial as being part of that commercial mixed use area. So that's counted in its inventory during its future projections. So right now, I don't think that they count industrial lands as purely industrial and commercial lands as commercial. I think they take into account that there is a certain percentage of the light industrial and a certain percentage of the heavy industrial that's going to be or has already commercial needs. So I mean, yes, it's always about you know, did we supply enough commercial space and that's probably the

reason, the answer is probably no, and that's why they moved into the industrial areas.

Mr. Shibuya: Okay, thank you.

Mr. Hedani: Any additional questions for staff? Commissioner Sablas.

Ms. Sablas: You know after listening to all of the testimonies from the various community members and business I can appreciate the concerns. And yet, our Council, the Planning Committee Council voted 7 - 0 to recommend passage, sorry is that what – Your committee voted 7 - 0 to recommend passage of the proposed resolution, so what am I missing?

Mr. Alueta: When a resolution comes up, they voted 7 - 0 to have the resolutions transmitted to the various commissions, the three commissions for comment. I don't know how much discussion. I think Director Hunt did raise our concerns there, but I think that the Council wanted to have the planning commissions fully discuss it and take over the – take the public testimony and go out to the various communities and get the public testimony. I think that's the whole purpose. As to whether or not those same Council members will vote for the reso when it comes up in final bill, it's unknown. I think this is where they – this is just the start of the process. A council member had a resolution and all he wanted to do was get it out to the commissions to discuss it.

Mr. Hedani: Additional questions for staff? Director Hunt.

Mr. Hunt: Just to follow up on that. Ms. Sablas what we did is we expressed our concerns to Council at the committee meeting and they said, well why don't we send it down to the planning commissions and see what kind of comments we get. So it shouldn't be seen as an endorsement of Council. It was more like, well, lets test the waters and I think we're doing that.

Mr. Hedani: Waters seem a bit chilly. Commissioner Mardfin.

Mr. Mardfin: Joe, in this report we got there's an Exhibit 2 which shows the industrial zone parcels and it says approximate number of M-1 and M-2 but it doesn't give acreage. One of the other people that put input in, I was going through and it looks like they, for Wailuku, I can't add up the number of parcels in my head too quickly, but something looks like to me close to 300 ...(inaudible)... acres work. Acreage would be more useful to me in this regard. Something like 50 acres in Wailuku and 57 acres in Kahului. Does that seem approximately correct?

Mr. Alueta: I –

Mr. Mardfin: One of the people that wrote, put those in. You wouldn't – I guess I'm asking if you think it's wildly off base.

Mr. Alueta: Well according to Will Spence Company, on his Exhibit 19.

Mr. Mardfin: Yes, that's where it was.

Mr. Alueta: He had Kahului light and heavy industrial as 385 acres and Wailuku light or heavy

industrial as 101 acres.

Mr. Hedani: Additional questions for staff?

Mr. Mardfin: One last one.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: We've heard a lot of testimony today and have looked through everything that's sent in and I just want to make sure I haven't missed anything. I can't recall hearing anybody testifying in favor of this and I don't recall seeing anybody writing in favor of this. Did I miss anybody that was in favor of this?

Mr. Alueta: No.

Mr. Mardfin: Thank you.

Mr. Hedani: Okay, any other questions for staff. If not at this point, we'd like to open it up for public testimony. Are there any other members of the public that would like to offer testimony at this time. Please step to the microphone and state your name.

a) Public Hearing

Mr. Clyde Murashige: Good morning Mr. Chair and Members of the Commission, my name is Clyde Murashige representing A & B Properties. Thank you for the opportunity to testify on the proposed bill. We have carefully reviewed the proposed bill and feel there will be major impacts upon our tenants of our industrial zoned properties and upon others that lease or own industrial zoned properties. Eliminating permitted business and residential uses would not be appropriate for older industrial districts such Kahului Industrial, Wailuku Industrial, the Millyard, Lahaina Industrial as these areas have matured into a cohesive mixture of uses providing a broad range of services and opportunities for business and consumers.

What began as outlying areas beyond the urban core, these areas are now part of the core fabric where residences are close or in some cases, within or adjacent to the mixed use industrial districts. Attempting to change to the mixed use district over time into pure industrial uses would create conflicts between surrounding residential development including having increased large truck traffic movement through and next to these areas. The mixed uses within current industrial districts actually reduce the heavy truck impact upon these residential areas.

Another detrimental impact of the proposed bill is that the number of current uses will become non conforming. Besides losing the ability to change business uses to other business uses and not being able to expand or possibly repair business there will be loss in property values which not only affects the owners but will impact the County Real Property Tax revenues.

Compounded with all of these is the realization that lending to these businesses or land owners with non conforming situations will become very difficult with either a reduction on the loan to value ratio

or no lending at all. I would just like to insert a personal point here. Having gone through a fire on a non conforming building it is one of the most difficult processes that you would have to go through. I think everybody needs to realize that it's not 50% of the physical portion of the building that it's calculated on, it's 50% of the value. So essentially you've got to do two sets of complete construction plans. Plans at the time of construction are valued at, versus plans to meet the current code. I think when we went through the so-called Wailea Steakhouse fire it took us a year and a half to get through that. So it is not an easy process on non conforming uses.

There is also an unclear issue which the bill raises and that's whether zoning changes granted via ordinance which establish conditions pertaining to allowable uses would be affected by this proposal. We hope that these conditional zoning approvals will not be affected by the changes proposed as it will raise additional legal issues.

If the intent of the proposed bill is to revise the industrial districts to provide for more industrial lands such as base yards and ...(inaudible)... yards, a comprehensive revision should be undertaken to address the impacts of establishing isolated industrial zoning districts. In planning for these districts, stakeholders should be included in the process as they are the end of the line users and their success in a large part depends upon zoning and construction regulations addressing the logistical requirements of the user.

Additionally, one of the primary reasons industrial lands are deemed expensive to acquire or lease is that the development requirements established by the County Code are costly to install and maintain. We need to recognize that the costs associated with these requirements as rent levels or purchase amounts need to be enough to pay the debt services associated with these costs.

In conclusion from a land use planning point, the proposed bill identifies land use exclusions from industrial districts in order to establish grouping of similar uses generating similar needs. This type of Euclidian zoning mandates a careful selection of industrial districts to obtain the balance between impacts of low density development and its pressure to spread out development with isolating the industrial districts from other uses while providing appropriate access to transportation and facilities. It is a model that may be out of keeping with the kind of flexibility that is necessary to allow small businesses to be truly responsive --

Mr. Hedani: If you can wrap up Clyde?

Mr. Murashige: In a second, yes. – to the pace of change in our economy and how business is done today. Thank you.

Mr. Hedani: Thank you very much. Are there any other members of the public that would like to offer testimony on this agenda item at this time? Please step to the microphone and state your name for the record.

Ms. Andrea Jakes: Good morning, my name is Andrea Jakes, I represent lao Parkside. lao Parkside is zoned M-1 Light Industrial. There are 480 condominium units in lao Parkside. If this bill went forward, how would the owners qualify for new mortgages? How would this affect their insurance? What could they do if there was a disaster like fire? We think that this bill has some

major flaws. We ask you to consider us. Thank you.

Mr. Hedani: Thank you very much.

The following testimony was received at the beginning of the meeting:

Mr. Mike Fergus: Hi, my name is Mike Fergus. I do have handouts for you. I was told I had to bring handouts. I'm here to speak on the issue of the stacking in industrial districts. Thank you for allowing me to speak today. I have owned Dairy Center on Dairy Road for 20 years. There are three separate parcels all with industrial zonings. In the '80's there were four buildings on the land and since then two retail buildings were permitted and built and one industrial building was converted with county permits to provide retail space. These buildings now are the home to a number of successful local small businesses including Maui Coffee Roasters, Affordable Furniture, Mac Net, Marcos, Island Paperie, Karen's Flower Shop, ...(inaudible)... Ichiban and Homemaid Bakery as well as some larger service provided such as AT&T, ClearWire and FedEx Kinkos. We also have office space for engineers, designers, CPAs, attorneys, dentists and doctors. We are continually upgrading our properties so that it is attractive and well maintained.

The proposed bill would make most of these users non conforming. I've had some experience with non conforming conditions. Turn over is normal on a project like ours due to growth and changing market conditions. When existing tenants move out it is difficult to find similar users. The market doesn't work that way. Usually changes in use are required to find a new tenant and most prospects for the space won't qualify under non conforming guidelines. The result is vacancies and failed projects, declining property tax revenue to the county and eyesores in the community for many years before the property is redeveloped.

The zoning system for retail space on Maui is unique but it works. The proposed bill would have catastrophic consequences to Maui businesses. If changes are to be made to the existing zoning ordinances I believe that the changes should be made via the community planning process where the community can work with Maui Planning Commission to change and improve our lives. As to the complaint that there's not enough light industrial and heavy industrial space available in the market, we have seen extremely tight conditions, market conditions here resulting in very few vacancies and rising rents in the last few years, but so have Oahu and the other islands. These conditions are the result of supply and demand factors created by the booming economy and the high cost to develop new buildings not by Maui's flexible industrial zoning laws that allow stacking.

We all know that the economy isn't booming now. Vacancies are climbing. Warehouse rents have dropped at least 20% in recently negotiated transactions and rents will continue to drop and vacancies will continue to grow even before the newly planned buildings are put in service in Waikapu, Bill Mills new project in Wailuku and other industrial projects now in the planning process and we also have Maui Land and Pine's Kahului Cannery on the market and other property that will be used by existing Maui businesses to create more space for the warehouse market.

There's no shortage of industrial space in this market and there won't be for a long time. I do agree with the Planning Director that a new M-3 Industrial District for newly rezoned lands would be a more logical response to the request by industrial users for more affordable space for their

businesses in this current proposal which is a huge overreaction to a relatively common supply in demand and balance that has already been solved by new inventory and a declining economy. Thank you.

Mr. Hedani: Thank you very much Mr. Fergus. The next person that we have is Mr. Clyde Sakamoto.

Mr. Clyde Sakamoto: Morning. Clyde Sakamoto, Chancellor of Maui Community College. Thank you again for supporting our science building, we're very grateful for that. I'm sorry to have to appear before you again this morning, but we do have concerns about Resolution 09-22, the stacking bill. I'm here to represent the university's concerns regarding the stacking bill.

We're grateful for the opportunity to testify before you related to the use regulations regarding light industrial districts. The university has reviewed the proposed legislation and would like to express its concerns as a portion of Maui Community College's lower campus is zoned on lands designed for light industrial. Should this legislation be enacted into law it would hamper our ability to construct and further develop our lower campus.

Furthermore, this legislation would undermine our mission by placing us in a non conforming category and preventing our college from reconstructing in times of manmade or natural disasters or to expand our campus to meet the growing needs of our community. It's for these reasons that we would recommend against the passage of Resolution 09-22. Thank you for your consideration and we'd be grateful for your continued support to allow us to continue to expand and improve higher education in Maui County. Mahalo.

Mr. Hedani: Thank you very much Mr. Sakamoto. Next person to testify is Mr. Howard Hanzawa.

Mr. Howard Hanzawa: Good morning, my name is Howard Hanzawa. I'm Vice President of Kaanapali Land Management Corp. Thank you for allowing me to speak before you this morning. I first learned about this stacking bill, industrial bill, in March about two days before the County Council meeting. And when I read it I knew that it would be drastic, have a drastic effect on many residents and businesses on Maui. There are many, many industrial zoned properties and most of them are old properties. Look at Pauwela Cannery, Haiku Cannery, Kahului industrial, Wailuku industrial, the Mill Yard. Many of those properties have been in existence a long, long time and there are many businesses and residents that work and reside on those properties. Iao Parkside, one of our largest residential condominiums is on industrial property. So I testified before the County Council and they listened and they advised me to actually form a committee, a working group, to further discuss and look at the ramifications of the bill. So I've done that and it was fairly easy to find people who wanted to be on the committee because again, there are many businesses and residents and that will be affected if this bill passes.

Our committee came up with a number of questions which I'll share with you and I won't go over all of them though there are many, many questions and concerns. If a fire or hurricane damages a building or tenant's space located on industrial zoned property and the value of repairs exceed 50% of the replacement value of the structure is it true that the owner or tenant will not be able to rebuild the structure for occupancy by non industrial uses? Since owners of condominiums and

businesses located on industrial zoned properties we need to disclose on conforming conditions in any sales transactions how will such a disclosure affect an owner's ability to sell his or her property? What will a non conforming business owner encounter when he tries to obtain financing for future expansion and to obtain property insurance? As there are many residents and existing businesses that will be affected by the proposed changes to the ordinance what will be the long term cumulative effect on the economy should the bill become law? Many of the older of the existing industrial properties have had residential communities go up to their boundaries, will the feelings of the surrounding communities be considered regarding allowing only strict industrial uses on the properties?

Let me finish up by saying that, you know, I think this last concern is something that I really have dealt with and that's about smart growth. You know, we've heard about smart growth in recent years to allow residents to live close to where they work. The industrial zoned property is one of the zoning properties that allows smart growth and now are we going to try to take that away? Thank you very much. And let me just again say that this is a bad bill. It was the Planning Department themselves weren't even asked about the bill. So thank you.

Mr. Hedani: Thank you very much.

Mr. Hedani: Next person to testify is Mr. Mike Nobriga.

Mr. Mike Nobriga: Morning Commissioners. My name is Michael O. Nobriga. I am President of Maui Soda and Ice Works, Ltd. I'm here representing two organizations in reference to Council Resolution 09-22.

First organization is lao Parkside Association of Apartment Owners. I reside and represent lao Parkside, a 480 condo, townhouse apartment complex located on M-1 zoned district here in the beautiful Wailuku. Besides having a serious problem with the non dedication of Eha Street that reeks total havoc with our peaceful community I would like speak against the proposed ordinance. The Board of Directors of lao Parkside AOA have reviewed the proposed ordinance and registered our opposition to this legislation moving forward. If the proposal if enacted will make our entire community illegal and non conforming. I do not believe that this was the intention of the author of this proposal. If the goal of future planned communities are to model smart growth initiatives and provide better self mobility to access goods and services, the contrary legislation should more likely be considered. Thank you.

On behalf of Wailuku Industrial Park Owners Association, likewise, the ordinance sucks. Thank you.

Mr. Hedani: Thank you very much Mr. Nobriga.

Mr. Hedani: Next person to testify is Mr. Jack Kean.

Mr. Jack Kean: Morning Commissioners, I'm Jack Kean and thank you for hearing me this morning. I'm here because I've been involved in commercial properties both business and industrial for nearly three decades in Maui County and I'm opposed to the stacking component of the bill.

Actually I'm opposed to both, but I'm here to specifically talk about the stacking bill as it's written. I have serious concerns with it as many of the people have today. I'll try to bring up a few things that they haven't.

As you probably have heard there's a lot of land in Central Maui that is affected. I think it's about 1,100 parcels, various owners, many of which are small businesses that bought properties for their individual uses where they may have a storefront and roll up door in the back plus maybe a rental of another commercial operation along side all of which would be non conforming. In addition, shopping centers such as Kaahumanu, Maui Mall, Maui Marketplace, all non conforming. I think if this went through they would become warehouses.

There's not a lot of logic in that component of the bill, but also when it's just a blanket elimination of the business categories, you eliminated from the light industrial component feed stores would no longer be allowable, that's a B-2. Laundromat, that's a B-1. Gasoline retailing that's a B-1. Parcel delivery station, that's B-2. Hardware and garden store, B-2. Equipment rental and yard sales, B-2. Automotive upholstery shops, B-2. Nurseries, flowers and plants, B-2. Sign painting, etc. It's in its present form there's not a lot of logic to it.

I do agree with the recent letter from the Planning Department, I think it was May 18th, suggesting a possible M-3. I think a lot of things would be helpful there. It's ...(inaudible)... creating a situation of taking, a down zoning of existing properties and putting people out of business, but it might create situations where distribution or baseyards are located in select areas possibly in the middle of cane field such as Central Maui Baseyard where they can have more noxious sort of things or distribution close to the harbor.

I also think the way it's written in the proposal there are also, it's also been proposed the catch all clauses are eliminated. I want to suggest that you can't just eliminate catch all clauses. Thirty years ago when I started this, we had never heard of kite boarding, windsurfing, self-storage, cell towers, brew pubs, water purification, recycling or redemption, internet cafes, wind farms, zip lines, fax equipment, it goes on and on so you have to have flexibility in the code and as it is, I'm afraid it doesn't really work.

I have one last thing and that is the apartment part of the light industrial which is probably a little different than the other uses, I have been asked by former Planning Directors to participate in mixed use and presumably –

Mr. Hedani: Jack if you could finish up?

Mr. Kean: Okay, sorry. Well, anyway, the mixed use presumably would imply that we would have residential together with the commercial component. So if that is something that's intended, it doesn't work either. Thank you very much.

Mr. Hedani: Thank you very much Mr. Kean. Next person to testify is Alvin Pelayo.

Mr. Alvin Pelayo: Good morning Mr. Chair and Commissioners. My name is Alvin Pelayo and I'm representing the small business and the hard-working people of Lahaina at the Pioneer Mill. At

Pioneer Mill we have the bus drivers and also the ones that drive the buses throughout Lahaina and Kahului. We also have the coffee plantation people. We also have Hawaiian Dredging over there and we have the small business of upholstery, painters and then also marble and granite companies. They're all small companies and they're all hard working people that live in the area of Pioneer Mill, but they told me, Uncle Al you come over here and you let the planning commission know that the hard-working people would like the Maui Planning Commission members that they do not support the bill and that the provisions of the industrial zoning ordinance be left unchanged. So this is from the small business and the hard-working people of Lahaina. Thank you.

Mr. Hedani: Thank you very much Mr. Pelayo.

Mr. Hedani: Next person to testify is Eric Taniguchi.

Mr. Eric Taniguchi: I'm an architect. I'm from Pukalani and I'm the President of the American Institute of Architects, Maui Chapter. I represent about 52 members of which 36 are licensed professional architects practicing here on Maui and Molokai.

First I want to thank all of you for your hard work and dedication to the planning process. I'm here to testify on the two proposed resolutions that would change the definition of uses in two zoning districts. The hotel district and the elimination of residences and apartments. The light industrial districts M-1 and M-2 and the elimination of permitted uses in B-1, B-2 and B-3 in that district. We strongly recommend not to support any of these changes and leave the current permitted uses as is.

The impact of these changes that these resolutions propose would have far greater negative and complex issues for coming if this becomes law. In the hotel district there are too many existing residences and apartments in that zoning any way. There are also way too many lots in that district which only a small apartment or single family house can be erected. And there are many Hawaiians that own these lands in Makena.

In the M-1 and M-2 district eliminating B-1, B-2 and B-3 uses would throw the proverbial monkey wrench into the current M-1 and M-2 permit process. There are way too many B-1, B-2 and B-3 uses already out there in Kahului Industrial area, Wailuku Industrial, the Millyard, Lahaina, near the airport Costco, Kmart, Triangle Square, the list goes on. I heard that grandfather clause would be used, but if those businesses fail then what happens to that space? Lets not go there.

The current M-1 and M-2 zoning allows for various businesses to thrive and grow. To allow light manufacturing, storage of goods and selling of products. This corresponds to smart growth principles.

To reiterate, the American Institute of Architects, Maui Chapter do not support any changes to the hotel and light industrial districts current permitted uses. And again, we'd also like to thank each one of you for your hard work and devotion to our community and our islands. Thank you.

Mr. Hedani: Thank you very much Mr. Taniguchi.

Mr. Hedani: Next person to testify is Mr. Sandy Baz.

Mr. Sandy Baz: Good morning Chair Hedani, Planning Commission Members, my name is Sandy Baz and I'm testifying on behalf of Maui Economic Opportunity and I'd like to offer testimony in opposition to the proposed amendments that would eliminate stacking of B-1, B-2, B-3 uses and apartment uses in the M-1 Light Industrial District.

First of all, the proposed amendments would adversely affect plans for MEO's new transportation center in Puunene. If the stacking of uses is disallowed in the M-1 Light Industrial District then the proposed MEO transportation center becomes problematic. Because proposed vehicle storage, repair and office uses are not exclusively allowed in the M-1 District but rather collectively permitted in the B-2, B-3 and M-1 Light Industrial Districts.

Our applications for community plan amendment and change in zoning from agricultural to light industrial which were supported by the Maui Planning Commission are pending before the County Council's Land Use Committee.

Another concern is the elimination of apartments as a permitted use in the M-1 Light Industrial District. Recently MEO has been pursuing opportunities to partner and develop affordable workforce housing, rental housing and preschool project. Due to the limited supply of available and suitable lands for affordable rental projects, the development of light industrial zoned land is a viable option. Until long term requirements for land use are addressed in the upcoming community plan updates and the comprehensive zoning ordinance is revamped, this is not the time to curtail housing options. Affordable housing for Maui's working families is and will continue to be a major social need in our community and land availability and development costs pose major challenges.

As a final comment, the proposed amendments to eliminate the stacking uses in Light Industrial District would affect many existing small businesses and organizations. For example, our sister agency, Maui Family Support Services which operates the early headstart preschool in the Millyard would become a non conforming use with proposed amendments. In these tough economic times we need to support our business community and not create unnecessary zoning compliance issues.

I just wanted to add also that we would probably support an additional zoning for – you know, if we want to keep specific only light industrial uses as a additional zoning opportunity I think would be a better option versus removing what's allowed in all of these M-1s currently. So I thank you for the opportunity to testify this morning. I'm in opposition to these proposed amendments.

Mr. Hedani: Thank you very much Mr. Baz.

Mr. Hedani: Next person to testify is Mr. Randy Endo.

Mr. Randy Endo: Good morning Chair Hedani and Members of the Planning Commission. My name is Randy Endo and I'm speaking on behalf of Maui Land and Pineapple Company in opposition to both of the proposed bills.

With regard to the remove of business and apartment uses from the industrial zone, Maui Land and

Pineapple agrees with the Planning Department's May 18, 2009 recommendation to file that bill. As stated in that report, the bill would create an administrative nightmare by making many of the 818 existing industrial zoned properties on Maui non conforming. For example, all of the commercial businesses in the Millyard would become non conforming. That is, they could continue to operate but under severe restrictions. They could not expand and if their building were significantly damaged by whatever cause they might not be allowed to rebuild. Or if the use of the building because the tenant left for a period of time, the use of the – the non conforming use status might also discontinue.

We do support the Planning Department's concept in their recommendation of creating a new M-3 zone where only industrial uses would be allowed. By creating a finer tool of that sort, the County Council could then rezone certain specific areas where they want exclusive industrial use. But in general, we feel strongly that flexibility of uses is superior to narrow zoning laws. The current industrial zoning ordinance allows for flexibility which allows for smart growth development where we have mixed uses. For example, we can currently have a mix of residential apartments, commercial and business uses all in the same industrial lot which reduces commuting and improves the livability on the island and that's generally the trend on the new urbanist model.

Speaking now with regard to the hotel zone changes, Maui Land and Pine agrees with the Planning Department's report of May 18th to not delete apartment use within the hotel district. Flexibility is key to helping our resorts remain viable. It should be noted that there hasn't been a new hotel only development on Maui since the Ritz Carlton Kapalua was built over 18 years ago. The hospitality industry has changed significantly during that time period shifting to changing market demands. At the redevelopment of the Kapalua Bay Hotel new hotel projects today usually contain mixed use components including true hotel, apartment, TVR and time share uses. This is not only to meet market demands but because hotel only developments no longer make economic sense.

We also agree with the Planning Department that changes to delete apartment uses in the hotel district will create significant complexity to manage all of these non conforming uses. There would be severe impacts on the financing modification expansion of hundreds if not thousands of units across the island.

Both of these bills create more regulation at a time when we need more stimulus not more constriction. For example, under the current law if you own industrial land you could decide to change from a manufacturing operation into a retail facility or vice versa without having to rezone your property. Under the proposed bill you would have to go back to the County Council rezone your property which cost you many thousands of dollars and years in processing time. Thank you for listening to our concerns.

Mr. Hedani: Thank you very much Mr. Endo.

Mr. Hedani: We have reached the end of the people that have signed up to testify. Are there any members that would like to offer testimony that have not signed up? If so, please step to the microphone and state your name for the record.

Mr. Lon Briggs: I'm Lon Briggs here as a the developer of the Emerald Plaza in the Lahaina

Business Park which is M-1 zoned and which have the usages of the B-1, B-2, B-3 Business also. One of the main reasons that we developed this place starting about seven years ago was because of the businesses that needed a place to operate their businesses out of that were in non conforming situations before. So now all of a sudden we've got a industrial, light industrial, M-1 zoned area that we could build commercial condominiums and sell them to individual businesses fee simple so that they would have their own place to work out of. It was conforming to their usage and everything else so some of them came out of non conforming uses into conforming uses which now they're legal, now they're doing fine. Everybody's doing just fine. It's actually working real well. So I'm opposed to this bill on the M-1 part because a lot of these people that bought like the one man said earlier have put a lot of their own money into these places, have worked hard at their businesses building them up. Now if it were to change and they go to non conforming then they're right back to where they were before in the non conforming usage and you know, possibly renting a non conforming garage in a non conforming house with a bunch of non conforming units which makes it a bigger non conforming problem, right? So anyway, I'm opposed to this bill just because it's working right now and you know, I think that we ought more focus on things that aren't working instead of things that are working. Thank you very much.

Mr. Hedani: Thank you very much. If you could sign up on the sheet to give the secretary your name. Are there any other members please step to the microphone and state your name for the record.

Mr. Tom Cerizo: Yes, Tom Cerizo. I'm a current owner of a building in the Millyard and I also I'm a retired insurance executive and when you speak in terms of non conforming, the state of capacity of insurance is very intolerant to non conforming use or non conforming buildings. It is rest assured that it will be paying insurance not from standard insurance carriers but insurance carriers that are either non admitted or extremely high and you will find that if you had to have a loan either on an improvement basis or you're going to remodel your building or build a new building, you will not be able to get insurance. Thank you very much.

Mr. Hedani: Thank you very much Mr. Cerizo. Please state your name for the record.

Ms. Doreen Gomes: My name is Doreen Gomes. My husband and I own a parcel over at Millyard and based on what's been said this morning it's obvious that the majority of everyone are in opposition of this bill. This is a business that we have that will sustain us through our golden years. So we're hoping that you would take serious consideration into opposing this bill. Thank you.

Mr. Hedani: Thank you very much Ms. Gomes. Are there any other members of the public that would like to offer testimony at this time? If not, we'll go back to Mr. Tom Welch on light industrial. Tom.

Mr. Tom Welch: Thank you Mr. Chairman. Tom Welch testifying on behalf of several small business clients. I just want to add my – I don't think I can add much to the overwhelming testimony against the industrial stacking bill, but I did want to add a couple of things.

Just out of curiosity I drove down Alamaha Street with my legal pad and made a list of all the businesses that I could see from the road and I counted 54. And then I drove back the other way

and checked off the ones that would become non conforming uses under this bill. This is just on Alamaha Street and I counted 41. So that's, what's the percentage, between 75 and 80%. Now that area as you know is a place where small businesses start, they expand, they relocate, they evolve, some of them fail, they're replaced and that's really – a place like that and the Millyard and the other places that are zoned M-1 or M-2 it's the heart of our economic life in Maui. And small business is really the heart of the community in so many ways. This kind of bill, I mean, would be seen as a, in a way, it would be seen as being against small business, anti-small business. I mean, we do a lot of things that are anti-development that debate has gone on for years, but anti-small business that's another matter.

And also, I want to reiterate my point that I made earlier on the hotel thing which is that this kind of huge ...(inaudible)... change in the structure of the zoning of so much of our island seems to me ought to be done in the community planning process with plenty of airing of public opinion and debate and input from the Planning Department, the Planning Director and it's too serious a thing just to pass like this.

Mr. Hedani: Thank you very much Mr. Welch.

This concludes the testimony received at the beginning of the meeting.

Mr. Hedani: Any other members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Staff recommendation.

b) Action

Mr. Alueta: Again, the department is recommending that at this time, that you recommend filing the bill. The issue of the existing industrial lands and any future industrial lands should be reviewed during the pending General and community plans. The County at the time may want to rezone existing lands to reflect their actual use before adopting legislation that would restrict businesses and apartment uses in the industrial zoned lands. And again, we also have the alternative that we try to establish a new M-3 Industrial District where you can have approximately 20% of the lot be used as an accessory use to have commercial.

Mr. Hedani: Okay, Commissioners what's your pleasure.

Mr. Guard: So move.

Mr. Hedani: Moved by Commissioner Guard to approve the staff recommendation. Is there a second?

Mr. Starr: I'll second.

Mr. Hedani: Seconded by Commissioner Starr. Discussion? Commissioner Starr.

Mr. Starr: Yeah, this is a dinosaur. It is trying to take the worst concept of, you know, Euclidian zoning, that every use should be separated and isolated and kind of put that on a pedestal. I think

we're moving forward to a time where we realize that mixed use allows more efficient communities where people can be closer to uses which are non noxious and I think we do realize and I think department realizes that there is a moving forward a need to create a M-3 or some of other mechanism for creating those land to be held for those uses which do truly want to be isolated from the rest of our communities and that's moving forward. So I certainly support this motion.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Yes, I do support this motion, but I also would like to make a friendly amendment to insert that the Council or the planning type of processes include, identifying potential areas in which commercial uses as well as exclusive industrial uses can be identified because I think that is the problem here. If we have a shortage in this area then they start overloading the mixed use areas. So the definition and the proposal to have M-3 is a good proposal and I think we need to go with that, but along with it, we need to identify lands and propose these lands or areas not necessarily only in the central Kahului, Wailuku area but to include Lahaina, the west side, perhaps even in the Hana side and/or even up Kula because you have tractors and farm equipment that needs to be repaired and they have no light industrial area zone. The community plan for the upcountry area has been identified it's on the plot, but additional areas such as in Keokea or where the farmers are would be appropriate and I think this is the kind of effort that we need to start doing, looking over the horizon and keeping peace in the family. Thank you.

Mr. Hedani: I'm not even going to try to repeat that amendment if that was an amendment. Was the gist of that already included in your staff recommendation, Joe?

Mr. Alueta: Yes, but probably just to identify – to have the Council try to recognize that they need to identify pure industrial, if we're calling an M-3 category island wide so not just Central Maui but island wide.

Mr. Hedani: And that's part of the staff recommendation?

Mr. Alueta: We can add it as part of our staff recommendation, yes.

Mr. Hedani: If there's no objection from the maker of the motion or the second, we'll go ahead and incorporate that without a formal amendment. Discussion? Commissioner Mardfin.

Mr. Mardfin: I'm going to support this largely because I think the community plans of the area are the mechanism that we ought to be relying on to figure out what use it should be in which areas. The community plans are closest to the problem and the needs. So I have no problem supporting the motion.

Mr. Hedani: Any other discussion? Ready for the question? Commissioner Hiranaga.

Mr. Hiranaga: Are we voting on the amendment?

Mr. Hedani: No, we're not voting – there is no amendment on the floor. What we're voting on is to approve the staff recommendation that the ordinance be recommended for filing. Director Hunt.

Mr. Hunt: There was a question earlier about how can we, and I'm going to try and paraphrase it, how can we express our strong concerns to the Council and this is your opportunity during your deliberations to express your opinion, to note facts, that perhaps there was no one, testimony included no one in favor. There was lots of opposition. I don't want to put words in your mouth. I just want to say this is your opportunity in answer to that question.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Thank you. Was there any – I don't know how we would be able to word it to maybe discuss these items with some of the larger land holders that are affected by this prior to bringing these potential bills in front of the commissions? A lot of man hours were wasted over the last couple weeks with people having meetings, trying to talk about this.

Mr. Hedani: Additional discussion? My only comment on the bill is that from my perspective when evaluating zoning, the lesser impacts – the zoning that are within a stacked zoning comprise lesser impact than the highest zoning that's allowed under that category. And from that perspective, it should be allowed because the impact generated say in a heavy industrial area from a commercial use is much less severe than a heavy industrial use zoning and from that perspective it's the reverse of smart growth. And what I'd like to see is that all of the testimony that the commission has received be transmitted to the Council along with any final action.

Are you ready for the question? All those in favor of the motion to recommend filing, signify by saying aye. Opposed, nay.

It was moved by Mr. Guard, seconded by Mr. Starr, then

**VOTED: To Accept the Recommendation to File the Resolution.
(Assenting - J. Guard, J. Starr, K. Hiranaga, B. U'u, W. Mardfin,
D. Domingo, W. Shibuya, L. Sablas)**

Mr. Hedani: Carried unanimously. Thank you. Director.

Mr. Hunt: Your next item involves the Planning Director transmitting Council Resolution No. 09-21 to the Lanai, Maui and Molokai Planning Commissions containing a draft bill to amend Section 19.14.020 of the Maui County Code relating to eliminating the stacking of residential and apartment uses in the Hotel District. The file number is RFC 2009/0028 and Joe Alueta is the planner assigned to this.

- 2. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 09-21 to the Lanai, Maui, and Molokai Planning Commissions containing a Draft Bill to Amend Section 19.14.020 of the Maui County Code relating to eliminating the stacking of Residential and Apartment uses in the Hotel District. (RFC 2009/0028) (J. Alueta)**

Mr. Joe Alueta: Good morning Commissioners again. Again, this is another stacking bill. This deals with the Hotel District and under the Hotel District you're allowed to have residential uses as

well as apartment uses within the Hotel District.

Again, we understand the concept behind what the Council is attempting to do, however, you know, this could be one of those where you're throwing the baby out with the bath water. There are some uses within the Residential District that we do think should be included within the Hotel District. If you're going to eliminate single family residence and apartments from the Hotel District you do want to have parks. We still think that schools should be allowed, government buildings, so if they want to do that they should at last move those desirable uses that they have from those districts into the Hotel District.

At this time the department believes that the bill should be amended to allow single family residences but only as an accessory use. This would provide for larger hotel developments with the flexibility to design their properties, projects which insure that the primary use of the hotel land is for hotels. Under the scenario, single family dwellings should be allowed but not as the principal use.

Again, this goes along with, you know, trying to plan -- your long range planning provides for adequate amount of zoned lands in the most appropriate location. Hotel Districts are described as a high density multi family area. If lands that are intended to meet the tourist accommodations are converted to a lower density use without lowering the demand for hotel accommodations other lands will be pressed into being converted in hotel zoned or uses. It should be noted that the draft Maui Island Plan does not propose to expand the resort areas or add new hotel zoned lands. Regardless of the final adopted plan it would be critical to wisely develop of existing hotel zoned lands in an efficient manner.

I had an update on my -- on the printout we had 60 single family residences in the Hotel District. Based on the thing we had about approximately 17 units, excuse me 17 single family residences on 13 parcels and there's approximately as far as multi family, there's approximately 5,088 apartments, non hotel apartment units within the Hotel District.

It should be noted that under the existing bill, the definition for 1904 hotel properties would not prohibit the construction of structures that look like a single family home. So you could still do a single family home, we don't -- in one aspect we're not going to be able to still get the density, it doesn't prohibit someone from doing lower density single family house structures. It's just that we would prohibit them from being used as a long term residence. They would have to be used as a transient vacation rental. So it would be kind of -- and that's why I think that it's -- in our discussions, you know, that we've had since the drafting of this memo is like, it would be very difficult again for the department to regulate or enforce such uses. I think that we're having a hard enough time keeping people from not short terming their single family homes. So we're on the opposite direction we're going to have to force people to have to do a short term in the Hotel District single family house.

So again, we have questions regarding the bill's effect on the condominium hotel district. The bill would eliminate apartments, but would still provide apartment hotels in the Hotel District. The department is unsure at this time whether the condominiums would still be allowed in the Hotel District as an apartment hotel.

Unless further research including legal advice concludes that condominiums would be allowed under the bill, the department recommends against deleting the provision for apartments in the Hotel District due to the large number of existing condominiums that would become non conforming uses. They'll also prevent future condo hotels from being developed. This would be counter to how the hotel industry has evolved to a prominently condo hotel type of a product. Most hotels developed in Maui in recent years have a portion has been condominium as well as being partially hotel.

Again, we did receive comments from various agencies. None, most of them non comments or no comments. We did receive prior to this memo being drafted we did get comments from the Maui Hotel and Lodging Association. That Exhibit 10, I apologize, Exhibit 10 was not there. I somehow mixed up their draft and put in the original. But I believe that it was transmitted around, passed out to you today. So at this time, the department recommends that apartments not be deleted from the Hotel District as a permitted use and the Council rather than delete any uses permitted in the Residential Districts they would have any use permitted in the Residential Apartment except the single family dwelling shall be allowed as an accessory use. The language should be added to insure the existing family, single family dwellings do not become non conforming uses. So again, we have a similar situation that we had with the industrial areas being applied to apartment hotel.

Mr. Hedani: So the staff recommendation in this case is not for filing?

Mr. Alueta: Yes. I just had to make sure we didn't change plans. I had to look at my director there quickly. So we're not recommending filing at this time and that at this time we just recommend that you not delete – that we would recommend amendments to their existing bill and that is to not delete apartments, that they would have – that they do delete any use in the residential district from the hotel district and that any permitted – and that they modify or amend that any use permitted in the residential apartment district except for single family dwellings shall be allowed as an accessory use.

Mr. Hedani: Okay, questions for staff? Commissioner Mardfin.

Mr. Mardfin: Joe, I had noted as you did that Exhibit 10 was the same as the original bill. But I thought I just heard you say that you passed out the alternative today?

Mr. Alueta: Yeah, they had drafted an alternative.

Mr. Mardfin: Can somebody show me what it looks like? Because I don't think I got it.

Mr. Starr: I don't think we got those.

Mr. Alueta: Okay, I'm looking back. I'll let the Hotel Association, they're going to testify on it.

Mr. Hedani: Additional questions for staff at this point? Commissioner Starr.

Mr. Starr: We've not received their recommendation, their recommended wording. So I'd like to request a recess until we get it so we can examine it and then be able to ask our questions.

Mr. Hedani: Any additional questions for staff at this point?

Mr. Starr: Mr. Chair, I had requested a recess until we get their recommended wording. Can we have that?

Mr. Hedani: I heard the request.

Mr. Starr: And you're denying it is that what you're saying?

Mr. Hedani: No, I'm asking if there's any additional questions for staff at this point other than that one question. Commissioner U'u.

Mr. U'u: Yeah, I'm just curious as to why the previous I guess amendment coming to us about the industrial use zoning we were recommending that it be done in the community plan or during the General Plan. Why is this different and why are we allowing the Council, not allowing, but why is it different? What's the difference? Why are we not letting it go through the I guess the procedure of the community plan and the General Plan and what's the difference?

Mr. Hedani: Director.

Mr. Hunt: I think the first thing is the level of non conformity. Our original analysis estimated 60 existing single family units and further research that's been refined down to we have 17. There may be a number of pending units but the extent of the non conformity would result is far less than in the first bill that you just reviewed. We also share the concern that with the trend towards offshore second homes there's a concern that our hotel zones are being eroded or evolving towards more single family homes which isn't – which it can be argued isn't an efficient use of our hotel zoned lands. And if we put low density units on our hotel zoned lands in order to accommodate our growth of hotel industry we're going to have to start expanding our resort and they'll consume more land and this is – our recommendation would be consistent with what we believe the draft Maui Island Plan is recommending right now that has gone through GPAC and has gone through some review with this planning commission. So in this case, we do have some concerns with the eliminating of the apartments and we don't like their phrase that the Council is using to delete that whole reference. We think it should be fine tuned and that single family units should only be used – only be allowed as an accessory use or in conjunction with a hotel. So they wouldn't be eliminated all together but the hotel would be the predominant use and this would be greater efficient use of our hotel zoned lands.

Mr. Hedani: Commissioner U'u.

Mr. U'u: When you mean hotel, does it include condominium use, does it include time share?

Mr. Hunt: If we eliminate their proposal to delete, and I know it's a double negative, the reference to apartments then the condominiums should be okay. So we're recommending that we don't even though the apartment clause, we leave that in there. And so that, we believe that should address all the condominiums that are out there, all the multi families, anything greater than just a single family.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Director, on the earlier bill I was asking about the real property tax impact. If a person owns a single family dwelling on hotel zoned property, they get taxed at the single family dwelling rate is that correct?

Mr. Hunt: I'm not comfortable answering tax questions.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Question, so in listening to your reasoning about offshore investors, being they cannot invest in hotel zone, you would rather have them invest in the residential zone if that's the case?

Mr. Hunt: I don't think that's our argument. Our argument is our analysis shows that there's a certain amount accommodations that we need to accommodate our tourist population. If we don't accommodate that within our hotel district and that it's not a bright line in the sand, we are supporting B&Bs for example. You got one before you today. But if we don't accommodate the tourist accommodations within our hotel district, where are we going to accommodate it? And the likely solution would be, okay, we need to create more hotel zones and that seems counter to the direction that the Maui Island Plan is going right now.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Just a follow up, that will leave them ag, to purchase ag and residential though. That's my only concern or one of my concerns. I understand where you're coming from but, I mean, how do we stop them outside investors from buying here you know, or do we for that fact?

Mr. Hunt: It's a very elaborate discussion and there's policies within your draft Maui Island Plan that speak to the location, the type of housing, possibly taxes, policies such as that that would diminish the offshore market and lead towards producing housing for the local residents.

Mr. Alueta: If I may Mr. Chair?

Mr. Hedani: Planner Alueta.

Mr. Alueta: To answer some of Bruce's questions. We have destination area resorts in which you have hotel commercial but you also have a large percentage of residential structures or dwellings which are primarily geared for the offshore market and so I think that's where we're trying to steer that if you're an offshore buyer, you can buy in paradise and you can buy in one of our destination area resorts such as Wailea and Kaanapali which you see that now. But we need to preserve the higher density hotel zoned lands that we have because one, they provide a lot of jobs when they're constructed, when they're operated as well as they accommodate a large amount of tourists and because I think tourism industry is going to grow on Maui and if we want to not have to continually sprawl our resort areas into other areas or rezone more lands then I think higher density is our path at this point.

Mr. Hedani: Director Hunt.

Mr. Hunt: And just to follow up, the proposal the department's making wouldn't eliminate single families it would just be accessory to a hotel district so it's not nearly as extreme as the Council's which would eliminate them all together.

Mr. Hedani: Additional questions for staff? Commissioner Hiranaga.

Mr. Hiranaga: So after all the pluses and minuses the Planning Department has proposed to the proposed ordinance by the Council, the only non conforming units would be those 17 single family residences that are unnamed?

Mr. Alueta: Correct. And then we would also – and we'd want to create some type of language so they do not become a non conforming uses.

Mr. Hiranaga: So why change the ordinance if you're going to accept everything that it was meant to prohibit and make them allowable?

Mr. Alueta: It would only allow for those 17 but – those existing ones would be continued, but it would not allow for expansion of.

Mr. Hiranaga: One more question.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: You can correct me if I'm wrong. My understanding is there is or are no vacant hotel zoned land on the island currently.

Mr. Alueta: There's one for sale right on South Kihei Road, four acres, right next to the Maui Coast Hotel and between the apartments complex on South Kihei Road.

Mr. Hiranaga: Mauka or makai of the road?

Mr. Alueta: Mauka of South Kihei Road.

Mr. Hiranaga: So there are vacant hotel zoned lands?

Mr. Alueta: Yes, there are – that's one I know of because I just drove by it yesterday. That's the one that's –

Mr. Hiranaga: So that would prohibit single family dwellings on that property? The proposed ordinance.

Mr. Alueta: Yes, yes. Yes, it would.

Mr. Hiranaga: As amended by the Planning Department.

Mr. Hedani: Director Hunt.

Mr. Hunt: Just to clarify, we would also work with the legal staff to make sure that any applications that are in the pipeline or that have received approval would also not be subject to non conforming. So the data base pulls up existing dwellings and there's some projects that have already gotten approval but they haven't been built yet. We'd need to address those also.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, what will we have to do to get a copy of this proposed ordinance so we can review it and discuss it?

Mr. Alueta: Well, right now the only proposal you have before you is the one that's from the County Council. That's what you're supposed to be reviewing. I'm going to try to get the copy of the amendments that was done by the Hotel Association. If they're not going to pass it out, I'm not sure if they had copies today to pass out during their testimony or if they're going to change their original. I had met with them several weeks ago prior to the drafting of the report. I'm not sure if their position has changed since that time. So my last indication was that they were going to just recommend filing but I'll let them speak for themselves.

Mr. Starr: Didn't you say that there was recommended wording from the department?

Mr. Alueta: No, that –

Mr. Starr: And that you thought that we had a copy of it.

Mr. Alueta: No, there's recommended wording from the Hotel Association.

Mr. Starr: From the Hotel Association.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I would like it if somebody could explain to me the differential impact either economic or social or anything else of things that to me would look alike namely an apartment either short term or long term, a condominium, a hotel room, a time share, in my mind they all look alike from the outside you wouldn't know the difference, but what are the impacts, the differential impacts or the differences?

Mr. Alueta: Depends on where you plan for them.

Mr. Mardfin: Well, I mean, they're all, well a condominium might be owner occupied for long term basis.

Mr. Alueta: Right.

Mr. Mardfin: Could be leased out on a long term basis.

Mr. Alueta: Right.

Mr. Mardfin: But time shares are basically short term.

Mr. Alueta: Correct.

Mr. Mardfin: Hotels are definitely short term. Apartments could be --

Mr. Alueta: From an antidotal information from the Visitors Bureau, okay, time share visitors spend less money per visitor outside. Tourists generate, use up more water, more trash, more sewer than long term residents.

Mr. Mardfin: But generate more money, more income.

Mr. Alueta: Well, I don't know how they generate more income if they don't work when they're on Maui.

Mr. Mardfin: Transient accommodations.

Mr. Alueta: Yeah, but I'm saying is from a – but transient accommodation tax doesn't go into our general fund to pay for landfills, water development and wastewater expansion. If you look at the studies that was done, that was handed out during the General Plan update it shows – that's how they do their planning. They figure out what are the impacts, how much do the impact of these they generate and then they figure out where do you need to do your infrastructure improvements. And I guess our concern is that we develop a lot of infrastructure both wastewater, water systems, roadway systems to our destination area resorts to accommodate not only the workers traveling to and from the hotel resorts but also accommodate the large amount visitors coming to those destination area resorts. And it seems as if it's kind of a poho, it's kind of a waste that you spent all this money on infrastructure and you underutilize it. At the same time it's bad to over utilize your, tax your infrastructure, but from a capital improvement standpoint you don't want to have your capital expenditures, your fixed business aspect not being utilized to its fullest capacity. And I think that's what we're looking at in the aspect of we've zoned something hotel with the idea that there's going to be a high density tourism accommodations there. And then turn around you get a lower density either long term or short term accommodations there.

Mr. Mardfin: Thank you.

Mr. Hedani: Additional questions for staff? Before we go to public testimony, the Chair would like to note that I'm going to recuse myself from voting on this particular issue because Kaanapali Operations Association testified this morning against this particular measure. So I may participate in discussion but I will not be voting on it. If there's no further questions for staff then we'd like to open it up for public testimony at this time and I believe we have a request from the Hotel Association for testimony, Carol Reimann.

b) Public Hearing

Ms. Carol Reimann: Good morning Chairman Hedani and Members of the Planning Commission. I am Carol Reimann with the Maui Hotel and Lodging Association. I just want to clarify that there is no alternative proposal on the table. It is our position that the bill be filed. Our membership is comprised of approximately 120 members consisting of hotels, condos, time shares and various allied businesses. Attached to my written testimony you will find a listing of MLHA members. Collectively we employ over 11,000 local residents.

If this bill were to be adopted uses such as residential condominiums, apartments and single family residences which currently exist will no longer be permitted. These types of uses would be labeled as non conforming with limitations imposed that would affect their continued viability. This type of grandfathering can come with future problems.

The proposed bill would eliminate or place restrictions on future uses that are currently allowed. These restrictions would hamper owners' abilities to remain viable. The current trend in the visitor industry involves properties that include a variety of mixed uses such as hotel units, single family residences, condos and time shares. This mixed use is what keeps us viable during these tough economic times like what we are experiencing today. Also current economic times do not support the investment of new properties that are solely hotel units.

The proposed bill may also have a negative impact to property values and may have a detrimental economic impact to non conforming owners who wish to make renovations, carry out extensive repairs to the units or want to sell their properties. For instance, work may be done – work done on any structure that is non conforming is limited to ordinary repairs. Ordinary repairs shall not exceed 50% of the current replacement cost of the structure and the floor area of the structure shall not be increased. If non conforming structure is destroyed to the extent of more than 50% of its replacement cost it shall not be reconstructed unless it's a historic property. No non conforming structure that is voluntarily raised or by law raised may be restored except in full conformity with the provisions of the zoning code.

The proposed bill also raises other important questions such as, if a hotel owner chooses to convert a portion of their property to condo ownership format would the condominium owners be allowed to place their units back in the hotel rental pool? If a fire or hurricane damages a common area of a condominium property located in hotel zoned property and the value of the repairs exceed the 50% is it true that the homeowners association would not be able to rebuild? If such repairs are less than 50% the replacement value but involves work over and beyond ordinary repairs such as replacing load bearing walls, etc., can this work be undertaken by the homeowners association?

Since owners of condominiums and single family residences located in hotel zoned properties would need to disclose non conforming conditions on any sales transactions how would such disclosure affect an owner's ability to sell his or her property? What impact might this have to the value of the unit? Structures that have grandfathered uses are limited to ordinary repairs. How would this affect the ability of landowners to obtain insurance for structures that have grandfathered uses?

Mr. Hedani: Carol, can you wrap up?

Ms. Reimann: Sure. In closing, the unintended consequences of this bill are significant. A non conforming designation raises many issues and problems. Eliminating current uses may negatively impact a property's ability to remain viable in the current changing marketplace. We urge that you not support the bill and that the provisions of the hotel zoning ordinance be left unchanged. Thank you.

Mr. Hedani: Thank you very much. Questions? Commissioner Mardfin.

Mr. Mardfin: I have two questions. One is you gave a list of your property members and allied members were they polled on this or are you just acting on their behalf?

Ms. Reimann: I'm acting on their behalf because many of them are affected. Many are hotels, sole hotels that you know, may want to convert at some time to mixed use. Some of them are condominium units with owners or with properties that are in rental pools. All of those would be affected.

Mr. Hedani: ... question Commissioner Mardfin.

Mr. Mardfin: My second question is, you're basically testifying against the bill as we received it.

Ms. Reimann: Correct.

Mr. Mardfin: What is your view of the bill as recommended by the Department of Planning?

Ms. Reimann: Well, we have concerns about how they would enforce the single family dwelling, you know, not being non conformity, there's another double negative for you, and you know, the ability of condominiums to be developed.

Mr. Mardfin: So you think it would still be very troublesome?

Ms. Reimann: Yes, I do.

Mr. Mardfin: Thank you.

Mr. Hedani: Thank you very much Carol. Are there any other members of the public that would like to offer testimony at this time? Please step to the microphone and identify yourself.

Mr. Thomas Croley: Hi, my name is Thomas Croley. I don't have dog in this fight, but I did think there was some additional information that should be considered and that is when we think about the Hotel District right now it needs to be clearly defined exactly what that district is. A lot of South Kihei Road that you might think of as Hotel District is actually Apartment District. What we have condominiums operating in that area under essentially a grandfathering that took place many, many years ago when transient vacation rental was outlawed as part of the time share ordinance. So my point here is that while that's not an area that's being directly impacted by this, what you essentially have in that area is non conforming use in this whole area. And now we're taking these little bits that are left that are zoned hotel and potentially creating more non conforming uses in those areas.

So the whole idea of trying to clean this up if you will and say okay this is just going to be hotel and this just going to be apartment and so forth is already, you know, it's already impossible to do because we already have most of the condominiums in the, not resort area but in the tourist area that's in apartment zoning as it is. So just taking these few and trying to move them into and saying this is only going to be hotel really doesn't solve the problem in any big way. Thank you.

Mr. Hedani: Thank you.

The following testimony was received at the beginning of the meeting:

Mr. Gary Smith: Good morning. My name is Gary Smith. I have never done one of these things before so bear with me I'm a little bit nervous. My family owns the Waterfront Restaurant in Maalaea. And from my understanding about this proposed bill, if we wanted to remodel our restaurant to stay current and to stay in the trend we would not be able to do so if the bill is passed.

Also, our location right on the ocean if a large hurricane was to occur and extensive damage to the restaurant, pretty much the Waterfront's all we have and if we couldn't remodel or put it back together, we've put our whole life into the restaurant. The restaurant's been there 30 years. My mother's getting ready to retire, it would have a drastic effect on us. We don't plan on selling the restaurant. It's going to be handed down to my kids eventually and if the bill is accepted and it goes through, it would just eliminate our ability to stay current on a remodel or to fix the restaurant up if it was damaged extensively and it's very possible it could be due to our location. So I hope that the bill is not passed. Thank you.

Mr. Hedani: Thank you very much Mr. Smith.

Mr. Hedani: Next person to testify is Mr. Gary Hogan.

Mr. Gary Hogan: Morning Chair Hedani and Members of the Maui Commission. Thank you for the opportunity to testify this morning as owner and operator of the Royal Lahaina Resort I'm here today to testify on the proposed bill that would eliminate stacking in the hotel zone district. In August of 2006, the Maui Planning Commission granted SMA approval of the Royal Lahaina Resort's construction of a 126 condominium units which included the renovation and construction of various support facilities for the existing hotel property.

If this proposed bill is passed in its current form, our building permits which are currently in review with the County along with the entire development and previously approved by the commission will be jeopardized. As a member of the Maui Hotel and Lodging Association I'm aware of the association's position on this bill. I support the association's position on this and really appreciate your consideration on filing this bill. Thank you for your consideration.

Mr. Hedani: Thank you very much Mr. Hogan. Next person to testify is Mr. Tom Bell.

Mr. Tom Bell: Good morning. Thank you. My name is Tom Bell and I'm the General Manager of the Royal Lahaina Resort. Chair Hedani, Commissioners, thank you for allowing me the opportunity to testify this morning. I, too, am aware of Royal Lahaina Development Group's opposition of the

hotel stacking – proposed hotel stacking bill. And I'm also a member of the Maui Hotel and Lodging Association. I'm aware of their position on this bill and I, too, think that the way that it is proposed currently is problematic and we, too, support the association and Royal Lahaina Development Group in their opposition of the bill as it's currently presented. So thank you for allowing me this opportunity to testify. Mahalo.

Mr. Hedani: Thank you very much Mr. Bell. Next person to testify is Ms. Kathy Inouye.

Ms. Kathy Inouye: Good morning Chair Hedani and the Planning Commissioners. My name is Kathy Inouye with Kobayashi Group. We are the development manager and we have a minority interest in what is known as the Wailea Renaissance Beach Resort. We strongly oppose this bill. Our majority partners is Starwood Capital Group.

Essentially if this bill is passed it means that non conforming uses will be considered non permitted. The major flaw in this bill and the serious concern that we have is that we'll jeopardize existing homeowners, condominium owners and existing associations of apartment owners from obtaining financing or refinancing and being able to insure their properties. This is a very serious concern.

The now closed Renaissance Wailea Beach Resort was originally constructed in 1978. In July 2006, approvals were granted by the Maui Planning Commission for plans to construct the Baccarat Resort of which you're all familiar with. The Renaissance was closed in September 2007 and has since remained vacant as we planned for redevelopment of the resort. However, with further deterioration the U. S. and Hawaii economies we've had to shelve that project and as you know, we're in the process of considering an alternative development plan which is known as the One Resort and Residences at Wailea.

If this bill is passed, the One Resort and Residences Wailea project will not proceed as this is a key financing element of the project and it will no longer be permitted. As a result, it's highly unlikely that the property that will be redeveloped and reopened by the current ownership group.

As a matter of fact, I'd also like to point out that I think one of the objectives of the stacking bill was the concern that it would take existing hotel rooms out of the inventory and that is not true. I have been in development 30 years this year. One of the first projects in which I was involved was Kaanapali Shores. It was developed as 100% condominium ownership with a rental pool, a hotel rental operation rather. And to my recollection, and I haven't confirmed this data, but just going over quickly with people that I know, it is our estimate that there are over 4,000 units, condominium units on this island that are currently being operated as hotel rooms and those would all be impacted. And so we would kindly suggest that you file this bill. Thank you.

Mr. Hedani: Thank you very much Ms. Inouye. Next person to testify is Bill Rees.

Mr. Bill Rees: Good morning Chairman and Planning Commission Members. My name is Bill Rees, I'm the General Manager of the Outrigger Maui Eldorado. The Maui Eldorado is a condominium resort located in Kaanapali. Eight-six of those units are in my vacation rental program and I'm very concerned about the impact that this bill, the hotel stacking bill will have on both the owners and on the business and on my employees. I have about 35 employees right now, some of whom aren't

working all that much these days as you might expect. I'm just concerned that as – if this bill goes forward that it will create other problems that will negate my even being in the condo rental business there, vacation rental business and I'm very, very concerned about that. So my recommendation is that the bill regarding – excuse me, that the hotel stacking be filed. Thank you.

Mr. Hedani: Thank you very much Mr. Rees.

Mr. Hedani: Next person to testify is Mr. Tom Welch.

Mr. Tom Welch: Morning Mr. Chairman, Members of the Committee, I'm Tom Welch. I would like to testify on the hotel stacking bill. There's – I have – There's two areas to talk about. First is a major concern which is that this bill really changes the very structure of the hotel zoning ordinance and affects a lot of very valuable properties. It has a huge impact. Some of the impacts have been pointed out and there are many others. But this bill did not come through the community planning process. This county and this commission spends a lot of time and the department too, defending, upholding and implementing the community planning process. This comes from a different direction and I honestly think that from the standpoint of how government works in Maui, how this planning commission works, how the Planning Department works, the council should be advised that it should come through the community planning process.

I have some specific concerns with respect to specific clients. This has some, will have some unintended consequences by prohibiting single family residential use within the hotel zone. For example, Maluhia which is a condominium, horizontal condominium on the north part of Wailea, everybody was thrilled that that wasn't going to be developed as a hotel and instead single family residences. There are at least four of those condominium lots left that have not yet been developed with their houses. They're owned by people. They're going to build their houses and they never built. So this bill would effectively prevent them from doing that.

Secondly, there are a lot of – there are several properties down in Wailea and Makena that are single family house lots in the hotel zone that aren't suitable for multi family or for hotel use. Palauea, the famous Palauea is one of them which is under litigation. Those are individual single family lots and if this county passes a rule saying you can't build a residence on there then the county will probably have to buy those properties from the owners.

Finally, down in Makena, looking at the Dowling properties, there's one property that's under development now that has an SMA approval prohibiting short term use, transient vacation rentals and hotels. The recent rezoning, there's a hotel zoned property that was in the last round of rezoning last year in the Dowling properties and condition no. 39 in that rezoning bill said no transient vacation rentals in that rezoned property. So I think the county is kind of running into itself and getting into situations where with proper study, proper hearing before this committee, plenty of time for the Planning Department to and the Planning Director to make proper recommendations, I think we can do a lot better than this. Thank you very much.

Now, I'd also like to testify about the industrial one and may I come up again?

Mr. Hedani: At the end of all public testimony you can come back again on another item.

Mr. Welch: Thank you Mr. Chairman.

Mr. Hedani: Thank you Mr. Welch.

Mr. Hedani: Next person to testify is Mr. Jeff Halpin.

Mr. Jeff Halpin: Morning everyone. Thank you for the opportunity to testify. I'm here today on behalf of the Lahaina Shores Association of Apartment Owners, the Kaanapali Alii Association of Apartment Owners as their managing agent and the Kaanapali Operators Association which represents all the hotels and condominiums in Kaanapali Resort. I'm the Chairman and Director of this organization.

I stand before you in opposition to the proposal that would eliminate stacking in the hotel districts. The proposed bill in my opinion falls under the category, if it ain't broke don't fix it. Kaanapali multi use facilities work just fine. Condominiums, hotels, retails coexist very well. In condominiums there are permanent residents living down the hall from transient guests. That flexibility needs to be maintained. This bill is filled with ambiguity. Does this bill mean that because a condominium has a transient use today a new owner can't use it as a residence in the future? Can a hotel room never be condominiumized or time shared? What if a natural disaster causes greater than a 50% loss? Will the property owner or homeowner's associations be able to rebuild if it is now, if it now becomes a non conforming use? And does remodeling only occur if the cost is less than 50% of the value?

My opinion, the current ordinance answers none of these questions. The large umbrella of hotel zoning needs to be maintained in the destination resort like Kaanapali. There's no need to place restrictions and limits on future uses already allowed in the hotel district. Once a property is deemed non conforming all types of side effects occur. Can you imagine the human cry in Kaanapali if you did anything to make these condominiums a non conforming use? And many of these transient condominiums pay property taxes at an extremely high rate. This bill seems to solve more problems – seems to create more problems than it solves.

In the staff's report they aren't clear about whether condominiums would still be allowed in the hotel district as apartment hotels. And ...(inaudible)... one of the staff's concerns is having hotel zoned land converted into single family residences. That is a near improbability in a destination resort like Kaanapali.

Concerns regarding stacking may be legitimate in other zoning districts, but in hotel districts, I think it's best to recommend that there be no change to the current uses provided for in the hotel districts. The need doesn't exist for this bill or even alternative. Thank you very much.

Mr. Hedani: Thank you Mr. Halpin.

Mr. Hedani: Next person to testify is Mr. Anthony Plitt.

Mr. Anthony Plitt: Aloha and good morning Chair Hedani and fellow Commissioners. My name is Anthony Plitt and I represent Intrawest Place Making the development manager for Maui Beach

Resort Limited Partnership, owners of the Honua Kai Resort and Spa at Kaanapali North Beach. I've been before you previously for the same project. I appreciate the opportunity this morning to provide testimony opposing the hotel stacking zoning bill.

The Honua Kai Resort and Spa in Kaanapali North Beach received a Planned Development Step 1 approval in February 2004, and Planned Development Step 2 and SMA approval in February 2005. Included in these approvals was the development of 624 condo/hotel units within two towers, 318 in the south and 310 in the north tower respectively and also 72 townhomes. As the Honua Kai Resort was approved as a planned development each component requires a Planned Development Step 3. All of these have been done today and approved by the planning commission for all total of 700 units. Currently we are completing our building permit process for the townhomes and we're concerned that should the proposed bill pass part of the issuance of our building permits we may not be able to construct the 18 four plexs which would be our 72 townhomes due to the non conformity. Furthermore, our existing 318 units within the south tower as well as the 310 hotel, condo/hotel units which are currently under construction in the Kunia North Tower would also be non conforming.

We hereby support the Maui Hotel and Lodging Association's recommendation and hope that the bill be filed. Thank you.

Mr. Hedani: Thank you very much Mr. Plitt.

Mr. Eric Taniguchi: I'm an architect. I'm from Pukalani and I'm the President of the American Institute of Architects, Maui Chapter. I represent about 52 members of which 36 are licensed professional architects practicing here on Maui and Molokai.

First I want to thank all of you for your hard work and dedication to the planning process. I'm here to testify on the two proposed resolutions that would change the definition of uses in two zoning districts. The hotel district and the elimination of residences and apartments. The light industrial districts M-1 and M-2 and the elimination of permitted uses in B-1, B-2 and B-3 in that district. We strongly recommend not to support any of these changes and leave the current permitted uses as is.

The impact of these changes that these resolutions propose would have far greater negative and complex issues fore coming if this becomes law. In the hotel district there are too many existing residences and apartments in that zoning any way. There are also way too many lots in that district which only a small apartment or single family house can be erected. And there are many Hawaiians that own these lands in Makena.

In the M-1 and M-2 district eliminating B-1, B-2 and B-3 uses would throw the proverbial monkey wrench into the current M-1 and M-2 permit process. There are way too many B-1, B-2 and B-3 uses already out there in Kahului Industrial area, Wailuku Industrial, the Millyard, Lahaina, near the airport Costco, Kmart, Triangle Square, the list goes on. I heard that grandfather clause would be used, but if those businesses fail then what happens to that space? Lets not go there.

The current M-1 and M-2 zoning allows for various businesses to thrive and grow. To allow light

manufacturing, storage of goods and selling of products. This corresponds to smart growth principles.

To reiterate, the American Institute of Architects, Maui Chapter do not support any changes to the hotel and light industrial districts current permitted uses. And again, we'd also like to thank each one of you for your hard work and devotion to our community and our islands. Thank you.

Mr. Hedani: Thank you very much Mr. Taniguchi.

Mr. Hedani: Next person to testify is Bob Hansen.

Mr. Bob Hansen: Good morning. Bob Hansen, here for – speaking for myself as an owner in the Wailea Beach Villas and also as the President of the Apartment Owners Association in there. We became aware of this a couple of weeks ago.

It really causes a lot of problems. I'm also a realtor and I know that when you grandfather in, you know, one of these if the building burns down and you have a more than 50% you can't rebuild it, what do you do? It's an insurance issue where it's very difficult to get insurance if you can't rebuild. So what does the insurance company do when it burns down or hurricane or flood, something of that nature? Also the value when you grandfather something in like that, historically has really dimune the value of the ... (inaudible - changing of tape)... If you talk about density, if the whole thing burned down lets just say it's 10 acres of property so are you saying you want us to, you know, tear it all down and then rebuild a hotel which instead of having 98 units would have, you know, 300 units. The beaches are already crowded there. They're talking about – the Grand Wailea is talking about adding 300 more rooms with Hoolei having a 120 rooms. It's going to really exacerbate the problem. I think the mean issue for me though is the 50% destruction and the rebuilding of the unit. The ability to not to do that would really dimune the value of the project and also have a big problem with the insurance issue. Thank you.

Mr. Hedani: Thank you very much Mr. Hansen.

Mr. Hedani: Next person to testify is Mr. Randy Endo.

Mr. Randy Endo: Good morning Chair Hedani and Members of the Planning Commission. My name is Randy Endo and I'm speaking on behalf of Maui Land and Pineapple Company in opposition to both of the proposed bills.

With regard to the remove of business and apartment uses from the industrial zone, Maui Land and Pineapple agrees with the Planning Department's May 18, 2009 recommendation to file that bill. As stated in that report, the bill would create an administrative nightmare by making many of the 818 existing industrial zoned properties on Maui non conforming. For example, all of the commercial businesses in the Millyard would become non conforming. That is, they could continue to operate but under severe restrictions. They could not expand and if their building were significantly damaged by whatever cause they might not be allowed to rebuild. Or if the use of the building because the tenant left for a period of time, the use of the – the non conforming use status might also discontinue.

We do support the Planning Department's concept in their recommendation of creating a new M-3 zone where only industrial uses would be allowed. By creating a finer tool of that sort, the County Council could then rezone certain specific areas where they want exclusive industrial use. But in general, we feel strongly that flexibility of uses is superior to narrow zoning laws. The current industrial zoning ordinance allows for flexibility which allows for smart growth development where we have mixed uses. For example, we can currently have a mix of residential apartments, commercial and business uses all in the same industrial lot which reduces commuting and improves the livability on the island and that's generally the trend on the new urbanist model.

Speaking now with regard to the hotel zone changes, Maui Land and Pine agrees with the Planning Department's report of May 18th to not delete apartment use within the hotel district. Flexibility is key to helping our resorts remain viable. It should be noted that there hasn't been a new hotel only development on Maui since the Ritz Carlton Kapalua was built over 18 years ago. The hospitality industry has changed significantly during that time period shifting to changing market demands. At the redevelopment of the Kapalua Bay Hotel new hotel projects today usually contain mixed use components including true hotel, apartment, TVR and time share uses. This is not only to meet market demands but because hotel only developments no longer make economic sense.

We also agree with the Planning Department that changes to delete apartment uses in the hotel district will create significant complexity to manage all of these non conforming uses. There would be severe impacts on the financing modification expansion of hundreds if not thousands of units across the island.

Both of these bills create more regulation at a time when we need more stimulus not more constriction. For example, under the current law if you own industrial land you could decide to change from a manufacturing operation into a retail facility or vice versa without having to rezone your property. Under the proposed bill you would have to go back to the County Council rezone your property which cost you many thousands of dollars and years in processing time. Thank you for listening to our concerns.

Mr. Hedani: Thank you very much Mr. Endo.

This concludes the testimony received at the beginning of the meeting.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Staff recommendation.

b) Action

Mr. Alueta: Again, at this time the department is recommending that the apartments not be deleted from the Hotel District as a permitted use. That rather than deleting uses – any use permitted in the Residential District from Section 19.14.020(a) in the Hotel District that it be amended to read: "Any use permitted in the Residential and Apartment Districts except that single family dwellings shall be only allowed as an accessory use." And three, that language be added to ensure that existing single family dwellings do not become non conforming uses.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, can we get a copy of this recommendation please?

Mr. Alueta: It's on the back of your memo report.

Mr. Hedani: It's what was submitted to everybody.

Mr. Alueta: On page 3.

Mr. Hedani: It's not on green paper. That's why we can't find it.

Mr. Alueta: I just do a memo report, I'm sorry.

Mr. Starr: I'm sorry, but I don't think I have that.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just a question from a procedural standpoint. This resolution came out of the Planning Committee of the Council. So does the committee deliberate the resolution and make their changes before it's transmitted to us or do they just transmit the resolution in its original form as submitted by the maker of the resolution? So has have they deliberated the resolution and provided comment?

Mr. Alueta: I don't recall much of a deliberation over the resolution. I think it was more they voted to transmit it down. Whatever discussion was in there is attached as the committee report as exhibit 1 to the memo report. So that's the extent of their discussion. And again, they're relying on you to have some form of discussion and then the heavy weight discussion will occur at committee when it goes back to them.

Mr. Hiranaga: Thank you.

Mr. Hedani: Joe, was this particular resolution, was this particular ordinance also introduced by the same council member?

Mr. Alueta: Yes, I believe it was introduced all at one time that's why it was packaged together as one.

Mr. Hedani: And we don't know the rational behind it? Behind the council member's intent.

Mr. Alueta: I would hate to guess at this point.

Mr. Hedani: Okay, Commissioner Starr.

Mr. Starr: Yeah, I have a motion I wish to move that we forward as our recommendation the recommendation from the department.

Mr. Hedani: I'm sorry can you repeat your motion?

Mr. Starr: Yeah, I move that we forward as our recommendation to the Council the recommendation that's been made by the department staff.

Mr. Hedani: Is there a second? Any other motions on the floor?

Mr. Mardfin: I'll second his motion.

Mr. Hedani: Seconded by Commissioner Mardfin. Discussion? Commissioner Guard.

Mr. Guard: How many vacant hotel lots are available like with hotel zoning that we're contemplating trying to build out, I don't remember all the numbers, was it last week's meeting that we discussed the need for so many thousand more hotel units during the General Plan update and if – is the hotel space available now is that the main concern that we'd be building one house per 10,000 feet instead of a six-story hotel room or hotel structure.

Mr. Alueta: I think that's part of the concern that the department has, that you're going to get a lower density use for the combination. I think – I wasn't there during the General Plan discussions but in talking with John Summers, you know, it's like they chose not to expand the boundaries of the resort or expand for new hotel. I guess they felt that there was existing inventory within the existing inventory of hotel zoned land. Again, I can only speak to the one I drove by yesterday that was vacant. I know that there are others but I do not have a map. The only thing that our department felt we needed to have was how many single family houses, existing single family houses would be impacted if they were on hotel zoned land.

Mr. Hedani: Additional discussion? Commissioner Starr.

Mr. Starr: Yeah, I do support the department's thinking on this. I think that the move away from hotels toward conversion of existing hotel zoned land and what is left that may be undeveloped into shoreline gated communities that are hardly utilized is a really bad trend that first of all, it's really bad for the economics for the job market. I think it's much better to have hotels than to have you know, three or four mansions with walls that keep the public out. Hotels are welcoming. Hotels allow value added uses such as conventions and I just see our hotel industry going away and I feel this is a really sad trend and it's not even going away to provide real residences for people who live here or even residences for people who don't primarily live here but to provide a commodity that just gets traded around and hardly utilized while, you know, allowing a mechanism for people to pour huge amounts of fertilizer to maintain greenery that ends up in the shoreline. I really feel that we want to maintain hotels and even condominiums and density in those areas and have it done, be done efficiently rather than move to have that converted to houses where no one lives and the local community is not allowed to go.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: Mine's not discussion as so much as a question. I really don't – haven't wrapped my head around what's going on here. So let me ask very simplistically a whole – a series of

questions. If we take the department's recommendation, hotels in Hotel Districts no impact. Is that correct? Time shares in Hotel Districts, no impact?

Mr. Alueta: This bill has no impact on them, yes.

Mr. Mardfin: This bill would have no – as recommended would have no impact on time shares in Hotel Districts. Condominiums in Hotel Districts, no impact. Apartments that are owned by somebody and rented out either long term or short term, no impact? Is that all correct?

Mr. Alueta: Based on our –

Mr. Hunt: In the Hotel District.

Mr. Alueta: In the Hotel District.

Mr. Mardfin: In the Hotel District.

Mr. Alueta: Yeah.

Mr. Mardfin: And this only affects the Hotel District is that correct?

Mr. Alueta: That is correct.

Mr. Mardfin: The one thing I would ask is in accordance with recommendation 2, rather than deleting any use permitted it say, any use permitted in Residential and Apartment Districts except that single family dwellings shall only be allowed as an accessory use. When you come to the bill, Exhibit 1, shouldn't under (g) accessory uses, shouldn't we have, we list bar, barber shops, shouldn't somewhere we list single family dwelling?

Mr. Hunt: Yes, this is the Council draft bill before you. So if the Council recommends or accepts our recommendation the bill would have to be revised.

Mr. Mardfin: Then they would add single family dwellings somewhere down there.

Mr. Hunt: And they'd likewise, their proposal to delete Item A under 19.14.020 would be rewritten.

Mr. Mardfin: That would be reworded. Thank you. At least I understand what's going on. Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just to clarify, from a procedural standpoint, typically Council Services works with Planning Department in order to craft proposed ordinance or Council Services just crafts it on their own?

Mr. Alueta: Every reso is slightly different and every council member works differently. Some

council members will have the bill initially drafted by Council Services, they will then communicate down to us. Council member Mike Molina is very good about that. He's submitted bills to us several times, we've commented and he sends them back down before he introduces them as a resolution. So we have a little take on them for some members. Some members just work with Council Services have them, this is what I want, this is my idea, write it up in a legal form and they introduce it as a reso and that's pretty much how it goes. I'm not sure if any of the – I don't not believe any of the draft resos go to Corp. Counsel for review at all either. They have their own staff to look at it. So basically, again, it's your tri party system right here. You got your legislative branch and you have your administrative branch and you have judicial branch and so they're one branch of government. They do their drafting, they send it down and give us an opportunity as the administrative branch to comment on it and that's pretty much where it works.

Mr. Hiranaga: Follow up question. So you stated that the Planning Department did not have an opportunity to review this proposed ordinance prior to submittal to the Council?

Mr. Alueta: That is correct. We did not have an opportunity to discuss it.

Mr. Hiranaga: Thank you.

Mr. Hedani: Commissioner Sablas.

Ms. Sablas: Earlier there was testimony from the Maui Hotel and Lodging Association that they feel there's going to be concerns about enforcement of your recommendations here. How do you address that?

Mr. Alueta: I guess I don't see that concern because we're allowing for apartments to be used. So as far as the time share apartment which is the primary concern I think that they have. I think the issue is going to be – is on these single family residential. I think the only way that I feel that we can address that in the future and we'll discuss it with Council I guess at a time either in the future bill is that you have minimum densities. Right now you have a FAR which is maximum. You can only do a certain floor area or a lot coverage. In some areas where you're trying to – where you want to encourage higher...(inaudible - changing of tape)... minimum of a 2,200 square foot house. That's what the subdivision bylaws called for. So it was kind – we had planned a smaller house but we were forced to build a bigger house and that's kind of what we would have to do with potentially in the Hotel District it says, if you're a hotel zoned land and we want you to build a hotel rather than you building a single family house we want you to build a minimum of 10-unit accommodation hotel or something. But that's something in the future we'll have to address.

Ms. Sablas: Thank you. If I could just add comment to that because being in the hotel industry as long as I have I've really seen the changes when hotels changed from hotel to time share. Employees almost were cut in half. Ballrooms were not used. And the rippling effect on the community is something to be considered. I understand that the trend is changing but I also understand where planning is going as far as long range vision for Maui and so this is why I was just trying to understand that what we do now is not going to put more hardship on the visitor industry which needs help now and if I'm understanding that as you're proposing it that basically it's just really on the single family as an accessory that's the impact of the recommendation but

everything else is pretty much staying intact. That's the understanding.

Mr. Alueta: That's the intent that we're trying to do.

Mr. Hedani: Director Hunt.

Mr. Hunt: And also we don't believe there'd be enforcement because hopefully we would craft the bill so it's just going forward from now on. Everything that's there now, condos wouldn't be affected because the apartments would remain. It would just be those few single family dwellings. We would craft some language that they're allowed to continue and they're not non conforming and so it's just going forward from now on.

Mr. Hedani: So you would force the single family people to have to not be a resident?

Mr. Alueta: Existing we would as Director Hunt mentioned we would, but in the future we would force you could still do a single family as an accessory so again, we're looking at it as you know, for a larger projects they could do –

Mr. Hedani: You just couldn't live in it.

Mr. Alueta: Yeah, we're going to have to work on it. But yes, yeah you couldn't live there. As an accessory, I think the example that we were given is an accessory is like say the general manager of a hotel they live there full time. That's technically, you know, it could be a single family residence.

Mr. Hedani: He'd just have to rent his unit every day.

Mr. Alueta: No.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I got some questions. If we go with the department's recommendation and you guys saying you're looking at crafting this bill, do we have that bill, do we have that bill back to us because essentially what we're voting for is something we're unsure of because it's not in writing. And I don't know the full effect of how it took place by saying oh, it's going to hurt this, that. There isn't enough discussion or a study to show how it would affect the entire community. And I not saying that you guys don't know what you guys doing because I know you guys are experts in the field but I am not comfortable voting for something that I cannot foresee the total impact. So we're asking to recommend something again to the Council with a potential of not coming back before us gives me second thoughts about passing something that I think there wasn't a detailed study to go into it before we pass it on to Council. So I'm going to voting against and I'm going to be making a motion. If it passes fine, but I understand what Jonathan Starr said and I like what he said. And it almost made me go to what he was recommending but I don't know the full extent of how it would it affect the community because I don't think we have enough detailed studies to give myself assurances that it's a great thing or it's a good thing.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: Again, from a procedural question, the previous resolution the recommendation was to file which means you're sending it back to Council for them to work on it, hope that they agree to file it, is that correct? Because we're making a recommendation. We've made a recommendation to file.

Mr. Alueta: Yes.

Mr. Hiranaga: So if they agree to file it, it would then be up to a current council person to decide they want to bring this back to the council floor since the maker of the ordinance is no longer on the council. Is that what would happen?

Mr. Alueta: Or they could – yeah, it's kind of a – you really don't know what's going to happen when it goes up to the Council. Again, and to address Commissioner U'u's concern is that we don't know, even if we make the recommendation or you accept the department's recommendation we're not assured that that's what council is going to do. They could reject the recommendation and go with their original bill. Other members may decide, no, I want to file it. I think – again, this is your opportunity to voice what your concerns or your comments and you're just going to have faith that they're going to do what they want to do. And as far as – they could be either filed if they accept the recommendation to file it, they could file it. Another member may say, no, I want to amend it some more. I have these other amendments to keep it alive. Or they could say lets just file it for now and if some other member wants to bring it up again, they can bring it up as another future bill. So it can go in all kinds of different directions.

Mr. Hiranaga: My second question.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Or comment. So, yeah, I'll be voting against the motion because I think there's more work to be done on this proposal. So, I don't want to act on a fairly incomplete proposal at this time. So I'll be voting against the motion.

Mr. Hedani: Commissioner Guard.

Mr. Guard: What are some examples of single family residence in the Hotel District?

Mr. Alueta: Isn't there one in Wailea?

Mr. Guard: I don't know, that's why I'm asking like if we're saying that either remove them I'd like to know which ones there are on west side and Wailea would be the main ones. I can think of one in Wailea but that's just me as a lay person. So I would think that you guys, someone recommending at the Council level, at Planning Department level to limit it should have a better idea for all of us.

Mr. Alueta: Like I say, the only one I know of is the one in Wailea that was a 13-lot.

Mr. Guard: So like Maluhia at Wailea and then what about, I don't know if in Kaanapali above – right below North Beach or at the southern end of North Beach there's residential there. I don't know if that was hotel zoned.

Mr. Hedani: That was HM Hotel zoned I believe and it's six single family units right now.

Mr. Guard: Okay, so that means is that it? Is that the only ones?

Mr. Alueta: According to our study we have about, right now we have about 17 existing.

Mr. Guard: Okay, so that sounds like 19 right there in those two developments and that's only, though I don't know if there's other ones. I'm uncomfortable voting in favor of recommending something that we don't know about versus filing it saying we want to – we're definitely here to protect the hotel industry but for future hotel areas I mean are we going to hamstringing certain individuals or?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: My understanding from our earlier discussion was this won't affect anybody that's using the Hotel District for any kind of short or long term housing aside from single family dwellings. Single family dwellings would be the only type impacted and the department has a commitment to write language such that any of the existing single family dwelling units and anybody in the pipeline for single family dwelling units would be unaffected virtually in perpetuity. So it's not that you're saying this owner can only do this and future owners have to do something else. But essentially going forward they would – those are frozen in. And what we are doing is supporting higher densities by disallowing future single family dwellings in the area. I think Commissioner Starr made a very strong case for why having hotel/apartment/time share/condo is opposed to having walled single family dwellings in terms of the public interest. So I'm going to vote very much in favor of this.

Mr. Hedani: Additional discussion? Commissioner U'u.

Mr. U'u: One quick one. I believe in the spirit and the intent of what the department is doing, but I'm still uncertain. But I would want the Council members who proposed items to get some in-depth studies, some backing, trying to pull them out of a hat and that would make me more comfortable in voting on something instead of throwing the super store and throwing out the industrial, get backing to support what they're asking us to do. That's all. I'll be voting against the motion.

Mr. Hedani: Additional discussion? Commissioner Domingo.

Ms. Domingo: Thank you. I feel uncomfortable. I will be voting against because I feel very uncomfortable not knowing the actual wording. I can hear you saying that this is how we're going to be moving forward but I feel really uncomfortable. I'm not understanding what you guys are going to be putting in this ordinance. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Just one final comment. This is sort of a watershed because I think is the first time we've been really discussing promoting density. It's not about use, it's about density. It's about saying that you know, in this specific area we want more use. We want more stuff built. And I think that that kind of mirrors the national planning trends which are to decide where, you know, where it's good to have stuff and then saying, you know, in those areas there should be more of it. It should be dense and then that allows you to leave other areas without – without a lot of development. So you know, I don't know if this is going to go anywhere. I think that it was kind of an orphan in the Council and it just kind of did its process and landed here with us. But the department kind of did a, you know, kind of catch and realized that it could be utilized to promote something which I think is good which is density in an area that has a valuable economic use. I do want to compliment them on that and really do at least – we should have appreciation of what they're trying to say and trying to do here. It's not about use, it's about density.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I'd just like to say, I concur with what Commissioner Starr said and it's a way, by doing this it's a way of preventing future hotel sprawl and so I think there's some real positive things to come out of this.

Mr. Hedani: Director Hunt.

Mr. Hunt: A couple concerns seem to be the actual wording that the bill would contain and it's quite common for bills to come to this body and you make a recommendation and it goes up to Council and the message it and they work on it. So that's not uncommon for them to work on the fine tuning. If you have concepts that you want to share, that should go forward. The wording should address this concept that or that concept.

The ideas or concern seems to be there's not enough a study and that could also be a comment from this body, but there should be additional study at Council, additional deliberations regarding the potential impacts or whatever like that. So you could include that in your deliberations.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I'd also like to add that I think this – by promoting higher densities in areas we've already dedicated for the tourist visitor industry this can promote additional building, promote jobs in the visitor industry, promote jobs in the construction industry and I think this could be a real plus, plus for the community.

Mr. Hedani: Commissioner Guard.

Mr. Guard: I understand the intent and the higher density and agree with that. I just wonder if even if this one didn't pass immediately if Joe or Planning Director will be able to massage for us in the next couple weeks and bring back just a little more information that wasn't – there are some vague areas. I mean, we don't want to file it indefinitely and it never comes back. I think the majority of it is good. I think there's just one or two lines that could be fine tuned and it seems like it could be done fairly quickly. Joe's a pretty efficient guy.

Mr. Alueta: Joe, they have a 120 days? I mean, they have time to defer it and we could come back with more information perhaps?

Mr. Alueta: Yeah, they have till, July 8th to get it back to Council, but that includes me getting minutes from Carolyn. So you know, and I have a vacation before that so I'll be gone for three weeks. I'd hope to get it out today so I don't have to deal with but – yes, we can work.

Mr. Hedani: Additional discussion? My only comment that I'd like to offer at this point is that I can see the intent of preserving hotel zoning as pure hotels. At one time personally, I was very much against the time share industry because I felt that it reduced a number of jobs that were available for employees working in the industry. The flip side of that and we're going to see it coming in June is that pure hotels are going to be laying off a hundred people from a staff of 500 and the impact on that is not because of anything that the hotel is doing wrong, density wise or any other way, but it's just that with the state of the economy right now, the impact is so great that a hundred people are going to end up being laid off. The flip side of that is the time share industry which I previously opposed is running 95% occupancy because that's what they do. They come whether they want to avoid it or not, because it's use it or lose it. And in those industries that are insulated with that type of use, the employees that remain that work for the time share industry are virtually unaffected by downturns in economy. So there's a ying and a yang to everything and there's nothing to say that what we recommend to the Council is going to end up sticking with the final ordinance. They could take our recommendation and toss it and go with what they originally had so I'm concerned from that perspective. Commissioner Sablas.

Ms. Sablas: I'm glad that you point – because like you I had my reservations about time share and I agree with you about the fact that those with time shares are more occupied. I still see the long term vision for Maui maximizing and encouraging the use of hotels. Time may change. We never knew – who could predict what's happening today 30 years ago? So I think like some of the commissioners here I support the intent, the concept of this bill but I am concerned that we don't have enough information. It's really, really an important decision or direction we need to make for the future of Maui and I think it really – it warrants more studies, it warrants more testimonies. I think warrants more deliberation before we make any kind of strong recommendation because it's that important issue for all of Maui.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: I'd like to make a friendly amendment to the maker, is it possible that we can table this measure and revisit when the Planning staff has more information?

Mr. Starr: Well, I think that's being is that the motion be withdrawn.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I think that what's being asked is that the motion be withdrawn and that a motion to defer be made in its place. I'd be willing to do that. And as such of the second, I withdraw the motion.

Mr. Mardfin: As seconder, well, I'd be happy to vote for the original motion today. I'd be also willing

to agree to a withdrawal for the purposes of a deferment.

Mr. Hedani: Based on the comment, the motion has been withdrawn with the consent of the second. Any further discussion? Commissioner Starr.

Mr. Starr: Move to defer.

Mr. Mardfin: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Mardfin to defer. Do you need to defer to a specific date and you have to cancel your vacation Joe.

Mr. Alueta: Already bought tickets. I need to – I do need to know what's the reason. Like what I am coming back to you for. So that would be –

Mr. Hedani: Commissioner Starr.

Mr. Starr: You're coming back for to bring us additional information and do some additional research when you report back to us.

Mr. Alueta: But in addition to what like the number of vacant lots that are out there? I can probably find you the number of vacant hotel lots. We can maybe fine tune our number of single family houses built within the hotel zoned district. But –

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I think the main thing people are concerned about is that the specific wording be spelled out, how you're going to grandfather in the existing single family dwellings and the ones in the pipeline. I think that's my reading of what the concerns were is it's along that way not so much additional research although additional research would never hurt.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Thank you. I don't know if they had any, it looked like in the meeting minutes it came up it was this idea at the Planning Committee level when they were reviewing a four-unit condo complex in Makena. It was on hotel zoned land and I'm assuming that's kind of substandard lot to build an actual hotel there or size wise, correct? I think I remember which one this was it came through here. And I don't know if the intent was if people are scared that someone might buy the Four Seasons and turn it into eight single story homes in there for top dollar, I mean, you never know, during the hey day so that that may be a valid concern that someone could buy those. I think that seemed to be the main issue. At least for me it was the single family use issue and how you are even going to massage that wording in that we're recommending to move forward with verbiage that we didn't really have.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I think probably what will ease a lot of concerns is you would give us a Ramseyer copy of the existing ordinance with the proposed changes and then we would have some specific wording that we can either recommend or not recommend rather than just you know, kind of this is conceptual.

Mr. Alueta: Okay, we can do that it's just that we are on a tight leash and so we needed to get this scheduled so, but I can get a Ramseyer version the existing ordinance, incorporating what we have as proposed and incorporating the uses that we want to see carried over and then I'll work with my director to find out about language about the non conforming existing single family lots.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I agree with the response from the nonconforming. I guess, yeah, wording would be one. Information on properties that would be affected potentially that would be affected. Also, I would like comments from the property owners. I think if we get more comments bringing in from the people who is going to be affected we can kind of come to a decision, if possible.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I might also suggest a map showing the 16 affected properties where they're located.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'll be voting against the motion to defer. I will be supporting a motion to file if it is put to the floor. I feel it should be sent back to the Council. If there is support on the current Council to bring this ordinance back to us after they have had a chance to review it because they are privy to the minutes of this meeting then I would like to deliberate on it. But at this point, I will be voting against the motion to defer.

Mr. Hedani: Additional discussion? Joe, is there anything broken with the existing ordinance?

Mr. Alueta: I'll defer to my director.

Mr. Hedani: Jeff.

Mr. Hunt: I would describe the Planning Department's version as a refinement of the Council's proposed bill. We don't agree with the idea to eliminate apartments because that would create thousands and thousands of nonconforming units. We do agree with the concern, the concept that our hotels, hotel districts should be used for high density accommodations and that's what we're trying to do. We agree with that concept, how we address that concept is what we're wrestling with.

Mr. Hedani: Additional discussion? Ready for the question? Question on the floor is to defer the existing recommendation without a date certain actually. All those in favor signify by saying aye. Opposed, nay.

It was moved by Mr. Starr, seconded by Mr. Mardfin, then

VOTED: To Defer the Matter for Additional Information.
(Assenting - J. Starr, W. Mardfin, B. U'u, J. Guard, D. Domingo,
W. Shibuya, L. Sablas)
(Dissenting - K. Hiranaga)
(Recused - W. Hedani)

Mr. Hedani: One nay. Motion carried. Item is deferred.

Mr. Alueta: Thank you.

Mr. Hedani: Going to take a 10-minute recess.

A recess was called at 11:20 a.m., and the meeting was reconvened at 11:33 a.m.

Mr. Hedani: We're on agenda item B-3, Director.

Mr. Hunt: This item involves John G. Camou and Sandy Beck Camou requesting a State Land Use Commission Special Use Permit in order to operate a Bed and Breakfast operation on 1.2 acres of land in the State Agricultural District at 555 Haiku Road, TMK 2-7-008: 041 in Haiku. The file number is SUP2 2008/0005 and Joe Prutch is the planner assigned to this project.

3. JOHN G. CAMOU and SANDY BECK CAMOU requesting a State Land Use Commission Special Use Permit in order to operate a Bed and Breakfast operation on 1.2 acres of land in the State Agricultural District at 555 Haiku Road TMK: 2-7-008: 041, Haiku, Island of Maui. (SUP2 2008/0005) (J. Prutch)

Mr. Joe Prutch: Thank you Director. Good afternoon Chair, Commissioners. The applicant was for a Special Use Permit for the Haiku Plantation Inn Bed and Breakfast of John and Sandy Camou. They're requesting a Land Use Commission Special Use Permit to operate a existing farm dwelling as a bed and breakfast at 555 Haiku Road. The existing dwelling is a five-bedroom house. The proposal is to use four bedrooms for the bed and breakfast and one bedroom remains for the property owners.

According to state law, the county planning commissions may allow certain unusual and reasonable uses within the state agricultural district that otherwise would not be permitted. In doing so, there are five guidelines that are established to determine unusual and reasonable use. I'll read these five guidelines off to you. They're in your staff report as well.

1. That use shall not be contrary to the objectives sought to be accomplished by Chapter 205 and 205A, Hawaii Revised Statutes and the Rules of the Land Use Commission.
2. That the desired use will not adversely affect surround property.
3. That the use would not unreasonably burden public agencies to provide roads, streets, sewer, water, drainage, school improvements, police and fire protection.
4. That unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

In the staff report, the staff as well as the applicant has responses to each guideline and the recommendation report as well.

I'd like to say also that the applicant has applied for a bed and breakfast permit for the recently adopted Bill No. 3611. The B&B would be reviewed administratively by staff after your action on the Special Use Permit. So we're asking that you're reviewing the Special Use Permit as it pertains to ag and that staff would continue on with the Bed and Breakfast Permit assuming a Special Use Permit were approved.

The property does have a history of bed and breakfast use since 1986 by three separate owners, the Champions, the Foxes and the Blums. The applicant purchased the property in 2005 to operate it as a bed and breakfast but of course, there is that clause in there that bed and breakfasts is non transferrable so she had to make applications for a bed and breakfast as a new owner.

The applicant does operate a productive farm. She'll go into some detail about the farm use on the site after I'm finished here. She's giving you some slide presentations. She'll go over that when she gets up here. She did receive farm plan approval from Zoning Administration back in February of this year. Has her farm plan fully implemented. What this means is that at least 50% of the property contains some kind of active farming which is a requirement for bed and breakfast permit approval in the ag district.

We had agency comments from Police, Public Works, Zoning Administration, Water, Department of Health and State Land Use and Office of Planning. All comments were responded to by the applicant and all those comments and responses are included in your staff report. If there are any outstanding concerns those can be conditioned by staff in approval of the Bed and Breakfast Permit.

I want to state that the applicant has received nine letters of support that are in your staff report. No letters of opposition and I heard three people speak in favor of the project today as well. So we have absolutely no opposition that I heard of on this application.

One last thing I'd like to say is that staff is asking if you were to approve the Special Use Permit, staff is asking for a two-year approval on this Special Use Permit as staff is in anticipation of the bed and breakfast we are looking to approve her bed and breakfast with a two-year time period and we would ask that you guys approve her Special Use Permit for two years as well so that when it comes time for renewal she can renew the Special Use Permit and the bed and breakfast all at the same time.

With that, can I leave it to Sandy to go over her ag and then come back to questions or would you like to ask questions of me first.

Mr. Hedani: We can have the presentation.

Mr. Prutch: Oh, and I do have some photographs of her site. It's in color but I just have one copy so I'll pass these around.

Ms. Sandy Camou: Hi everybody. Thanks for letting us be here and present our project to you all. We do have an active farm plan. We've planted the – actually the property is very small, it's only a little over one acre and with the house and the driveway and old garage that's there it was challenging to get the 50% on, but it is 50%. And some of the plantings have actually been double purpose. There's a lot of existing older trees and citrus and avocado and coconut. The property's a little over a hundred years old so you can imagine there's a mix of old and new and we're expanding.

So we've sort of taken the things that we know have grown well on the property and expanded those things and that was citrus and the bananas are the two things that we kind of developed further into the property and expanded it. And ...(inaudible)... particular things where there was a lot of light say like coconut we've also planted like Molokai sweet potatoes. We've got a big patch zucchini growing. We've got beans growing on the vines. We've got lilikoi growing wherever we can have vines that are growing. We've multi-purpose the cut flowers with bananas along, within the side with the shade is. We've also added coffee into the berm, because there's like a berm that runs around the whole property and you can't really see the house from the street. But the berm has cut flowers and heliconias and that's where also add into the coffee. So we're hoping that that will be productive later but in the meantime, we're using the coffee when it comes in. I have friend that actually does bath and body products and she uses that for like her spreads and things. So we've got a lot of ideas what we're going to do with our production and it has been very fruitful in the past for us and I just haven't really been there the last couple years because we have been closed down. We have a tenant. So we've been working on the property the last maybe six months since January since this came about where we possibly be back into our home and doing our bed and breakfast and produce agriculture that the property so much deserves.

We're co-oping with our neighbors. We have a fruit stand that we're co-oping with. We're co-oping with them as far as production for their property and ours. We're kind of sharing the same type of plantings. We're sharing our seeds, we're sharing what we're planting and producing what we're selling. We're actually sharing farm labor and we're sharing equipment because for one acre it's really expensive to have some of the equipment.

We've also gone down the street, we have a wonderful school called Horizons and we are developing, we haven't implemented it yet because we're not on property ...(inaudible)... but we're going to do a student education programs. They're going to do the science projects on our property and they're going to have a perpetual garden where the students can come in. They have 21 students of various ranges and they will be able to keep the property going, their ...(inaudible)... and they can use it for educational purposes. They can come down and they are going to be picking off of the property itself whatever they yield and they can use that for their lunches and it teaches them how to do from ground, to plantings, to yield, to actually having their meals produced and we've also worked with one of the local restaurants and they're going to sell the local restaurant as well. So they are going from beginning to end, from learning to marketing the whole scale for their life skills. So I thought that was pretty important.

So that's pretty much where we're at to be honest with you guys. We're pretty active on the property lately and we're hoping that we get passed. So if you have any questions, I had a power point presentation but there's a copy going around with some of the pictures that kind of show a lot of the older plantings. Because our mango tree is like a hundred years old so it's huge. So part of our parking is actually under the mango tree. There's a picture of the parking area which is pretty substantial. I don't know, you guys have any questions?

Mr. Hedani: Questions for the applicant? Thank you very – I'm sorry, Commissioner Mardfin.

Mr. Mardfin: I have kind of a checklist I go down that I've kind of developed informally. It's been operating as a B&B for many years?

Ms. Camou: It started in '86 as a B&B yes and it was permitted.

Mr. Mardfin: You have stopped when you were notified by the Planning Department?

Ms. Camou: Yes we have.

Mr. Mardfin: You have an ag plan. You have a history of doing agriculture.

Ms. Camou: Yes.

Mr. Mardfin: When you're operating as a B&B, you are the owner and you'll be on site.

Ms. Camou: Yes.

Mr. Mardfin: Are you – do you have a home tax exemption?

Ms. Camou: No. In fact we don't take a home tax exemption now either.

Mr. Mardfin: Because you've stopped you don't currently pay GET and TAT but you did when you were operating?

Ms. Camou: We operated for maybe about eight months and we did, yes.

Mr. Mardfin: Both TAT and GET?

Ms. Camou: GET yes.

Mr. Mardfin: No complaints from your neighbors and your neighbors like it. Are all your buildings permitted?

Ms. Camou: Yes.

Mr. Mardfin: And maybe this is more for Joe, but this is consistent with the community plan?

Mr. Prutch: Yes.

Ms. Camou: Yes.

Mr. Mardfin: Thank you very much.

Mr. Hedani: Any other questions for the applicant? Commissioner Hiranaga.

Mr. Hiranaga: Well, actually this is just a comment. The previous commissioner's questions I think all of his questions were answered in the staff report except for two. So maybe I suggest he do that internal personal checklist personally and if any of those questions aren't answered by the staff report then he asks them. Thank you.

Mr. Hedani: Any questions for the applicant? Seeing none, thank you very much.

Ms. Camou: Thank you.

Mr. Hedani: Director.

Mr. Hunt: I did want to mention that we had some conversations with the Water Department and so when Joe gets to his recommendation we will be discussing Condition No. 5.

Mr. Hedani: Okay, any additional – okay, if we don't have any other questions for staff, we're going to open it up for public testimony. Are there any members of the public that would like to offer testimony on this agenda item at this time? Please step to the microphone and identify yourself.

a) Public Hearing

Mr. Thomas Croley: Hi, I'm Tom Croley and I am testifying on behalf of the Maui Vacation Rental Association and also on my own behalf as an applicant in this process as well. What's before you today is Sandy's SUP not her B&B permit just to be clear that you're evaluating just the state use here and whether it's compatible in the district. What's she's asking to do really isn't changing the basic use of the property goes to what you were talking about earlier this morning. A hotel use has more to do with density than it does with whether the people are staying short term or long term in the property. So some of the conditions and some of the conditions that we put on hotels and so forth have to do with the fact that they're high density. Sandy's not asking to increase the density on her property from what its current use is. This is just something that I want to point out pretty much with respect to water and the fire flow requirements in that the fire flow requirements have been laid out primarily about a density issue. When we have a lot of people in a small amount of place we have to have a high level of fire protection and we don't want that fire to spread. Whereas in an agricultural district as she's in where things are already spread out and we don't have a high density, that's the reason in the past we haven't had a higher, this higher level of fire protection needed in the agricultural district. So I would again say that this use is compatible in her district whether she's housing long term tenants as is the case right now or short term tenants as she's asking too. Thank you.

Mr. Hedani: Thank you very much.

The following testimony was received at the beginning of the meeting:

Mr. Patrick Boyd: I'm actually not speaking about the stacking bill. Lets see. I work for the –

Mr. Hedani: If you could use the microphone Patrick?

Mr. Boyd: Okay sure. I work for Maui Animal Rescue and Sanctuary and offer this testimony in support of Haiku Plantation Inn and its owner John and Sandy Camou. The sanctuary shares a boundary with Haiku Plantation Inn. In addition to always being a quite, courteous and thoughtful neighbor, the Inn is without a doubt an asset to our little neighborhood. Specifically the sanctuary I work for relies on visiting veterinarians and their staff in order to see to the medical needs of the many animals in our care. The Inn provides a convenient and economical place for them to stay during these working visits. The closure of the Inn has forced the sanctuary to find accommodation far from Haiku, greatly inconveniencing our guests and necessitating the added expense of a rental car. On behalf of the sanctuary I ask the commission to consider that it is not only tourist who are affected by the closure of Haiku Plantation Inn, the loss a convenient, next door place for our working guests to stay has diminished the efficiency of these important visits and has added a financial burden to our already stretched budget. Please grant the permit necessary to reopen and continue being the helpful and necessary neighbor that we've always known them to be. Thank you.

Mr. Hedani: Thank you very much.

Mr. Hedani: The next person to testify is the Reverend Kevin St. John.

Reverend Kevin St. John: Good morning. I am Reverend Kevin St. John from the Temple of Peace Healing Church next door to 555 Haiku Road which is the Haiku Plantation Inn. And we really love Sandy as a neighbor. I think our house is probably the closest house to that structure and they have never given us any problems over the years. We have many students which come in from all over the world from Korea, Australia, the East Coast. And having them being able to stay next door was really a wonderful thing for us. I would like to recommend that you grant her the permit for this B&B because we really need to have these types of facilities in our neighborhood specifically for all the students and guests which come in from all over the place. I feel that it has really hurt our community to have the B&Bs closed in Haiku and would encourage you to review all the permits and applications so that we can once again, build up our small country town as a popular place to come. Right now people have to go, they have to go Kahului and stay in the hotel or on the other sides very, very inconvenient. So I just thank you so much. I recommend that you pass this for her. Thank you.

Mr. Hedani: Thank you very much Reverend St. John.

Mr. Hedani: Next person to testify is Claudia Ledesma.

Ms. Claudia Ledesma: Good morning Chair, Commissioners, my name is Claudia Ledesma and

you may remember me standing in front of you in January for the same issue as Sandy and John Camou are going through now. I am not direct neighbor. I have the property with the Animal Sanctuary between me and Sandy, but we're definitely close enough to be in hearing distance and walking distance to each other. The bed and breakfast has existed many, many years before Sandy and John purchased it. I don't think there are any complaints at all. It is really like Patrick said, a great addition to our neighborhood. It offers something completely different than what we have. It is a beautiful old plantation home and it is a true bed and breakfast, and the old style bed and breakfast. It's just such a shame. And Sandy is one of those people who also obeyed orders and shut down. She had to move away from her own home and you know, they're struggling. It would be really great if you could pass that through and add to what we have and like ...(inaudible)... said, it would be really great to get Haiku going again the way we had it before respecting our neighbors and adding something nice to not only the tourists but also to the people who live there and can help out in the neighborhood. Thank you.

Mr. Hedani: Thank you very much Claudia.

Mr. Hedani: Are there any other members of the public that would like offer testimony at this time? Seeing none, the public testimony is closed. Staff recommendation.

b) Action

Mr. Prutch: Lets see, staff recommendation. This application for a land use commission special use permit does comply with the applicable standards for an unusual and reasonable use ...(inaudible)... in the State Agricultural District, Section 205. The Maui Planning Department is recommending to the Maui Planning Commission approval of the Land Use Commission Special Use Permit subject to the following seven conditions and I do have a couple that I want to point out.

As Director Hunt mentioned, Condition No. 5 is one that's asking to be deleted and just note too when we go forward with the Bed and Breakfast approval staff wise if ...(inaudible)... that full compliance condition could be in that Bed and Breakfast permit matter as well.

And I wanted to point out Condition No. 1 ...(inaudible)... something different. I don't know if it's been done before I'm not sure. The extension gives her the two-year time period until May of 2011 subject to further extensions of course. Usually the extensions have to come back to the planning commission. Kind of in an effort to streamline this process, we're asking that – or we placed a condition in there that the Director of Planning may approve said extension if there has been no significant changes to the approved permit. Otherwise if there have been some changes we would bring it back before the planning commission for approval of the extension. So something that could maybe allow an opportunity to streamline these extensions if there's been no change, let staff go ahead and approve it administratively with the bed and breakfast extension as well, all in one packet.

So I'll leave at that for now.

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: Yeah, move to approve the Land Use Commission Special Permit with the terms and conditions as per the staff recommendation.

Ms. Sablas: Second.

Mr. Hedani: Motion to approve, seconded by Commissioner Sablas. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I have several questions to ask not necessarily specific to this application but over the general process. Earlier I had requested the Department of Water Supply provide a representative to answer some questions specifically regarding water service requirements. So I would like the opportunity for the Department of Water Supply staff, they were here but they left because they didn't know when they're come back. So I notified them –

Mr. Hedani: We have somebody from Department of Water Supply if you have a question.

Mr. Hiranaga: My questions will take more than 10 minutes. So I just wanted to say that I had notified them to come back at 1:00 p.m. But if she's here I can start asking her the questions if that's what the Chair.

Mr. Hedani: Why don't you just toss it out since she's here.

Mr. Hiranaga: Okay. In the staff report on page or exhibit 8 I guess, I guess there's a requirement to submit calculations for fire, domestic and irrigation needs. And then in the commentary on page 12, they say there's an existing 8-inch line fronting the property. So my question is and I thought I jotted it down, some requirement about 40% plus the fire rating or – here it is, this is page 12, it says, "the Water Department believe that B&Bs use approximately 40% more water than homes with long term residents. Water Department also believes that the fire risk to non residents is higher than for residents and that this justifies a higher water flow requirement based on several reasons." And the next sentence it says, "increasing water flow can only be accomplished through increasing the size of the water line serving an area, estimate cost \$300 per linear foot." So I'm wondering what are the discussions that's going back and forth between the Water Department and the Planning Department because then you made this recommendation to modify your or to delete No. 5, "full compliance with all applicable governmental requirements shall be rendered except that providing water service to meet standards shall not be required." So it appears there's some kind of a conflict between the Department of Water Supply as to what's required and what the Planning Department ...(inaudible)... required. So I wanted an explanation on what disconnect is.

Mr. Hedani: We have a representative of the Water Supply Department if you could state your name for the record into the microphone.

Ms. Ellen Kraftsow: My name is Ellen Kraftsow and I also just emailed my boss, sorry so he'll be here in a little bit hopefully. Basically the report doesn't entirely accurately characterize our position. So if I may I'll just sort of tell you what that is. First of all with respect to this particular permit, the applicant did submit fire flow calculations and I believe that the fire flow is adequate so they would be able to meet fire flow according to standards.

As far as the rest goes, I think that the Water Department has, you know, over time in this issue maybe not entirely been accurately represented. One thing that you should know is that this County has a first and second home exemption for dwellings. And that exemption was initially made so that the average person could just afford to have a home and live on their property. But over years because of that exemption instead of somebody sort of getting a break from fire protection, bringing the fire protection next door is they would have to – from next door is they would have to do in most of the country. Now to do anything more with the property people have to bring fire protection, you know, spend a third of a million dollars because it's farther and farther and farther away cumulatively with each little increment and it's been going on for decades.

So we have a system that's very, very behind standards and so many of these bed and breakfasts are located in areas where there is no fire protection that's adequate for the structures. There's not even residential fire protection. So it's not that we believe that bed and breakfast have a higher fire risk. We do believe however that they have a higher liability and then the cumulative impacts of them do increase our burden to protect life, increase the burdens on system both they tend to use our statistics so far show between 140 - 150%, this is on the average. This isn't everyone. But between a 140 - 150% of homes in the same subdistrict. So a bed and breakfast in Kihei or compared to single family homes in Kihei or bed and breakfast in Haiku is compared to a single family home in Haiku on the average, the difference is it's a 140%. So we know that they do use more water. As Joe said in his last testimony about visitors versus – they use more water, that creates an additional demand on us not only to provide service but to provide pumping at peak hours and things like that. And then there's this liability issue where some years ago there was a case in Honolulu and I apologize I don't know the case off the top of my head but there was fire in a bed and breakfast died and they sued, the family sued, sorry not the dead person. The water utility loss because they had signed off on this permit and one of the discussions was that, you know, if you live somewhere or even if you're a long term renter somewhere, you're living in the area you should more or less know the conditions. But if you're a traveler, there's a reasonable presumption that if you're staying at a permanent facility, it should meet adequate safety standards and this is a misconception.

A lot of our residential areas don't have residential fire protection because of the first and second home exemption. So they may have ag protection which is not adequate to protect the structure. So it's not that we want commercial fire protection or any kind of zone specific fire protection, but the minute that fire protection is required what we do is calculations that say, okay, these are the structures on the site, this is what they're made of, this is how flammable they are, this is how large they are, this is how close they are to other things that could spread a fire and what we want is to see that the system in the area is adequate to protect whatever's actually in use.

Mr. Hedani: Does that answer your question Commissioner Hiranaga.

Mr. Hiranaga: Yeah, actually that's a very good answer. So do you consider a B&B a commercial use or a auxiliary residential use in your fire flow calculations?

Ms. Kraftsow: We don't consider it – we just consider it a non – what we try to do is this first and second home dwelling exemption that has been killing us for years we try to pretty much restrict that to what – whether it fits the definition of dwelling under our rules as an exempted. The only

thing that was ever meant to exempt was some guy can live on his property, some small, the little guy can live on his property without undue expense. And so, anything more than that we try to limit the restriction there because we're already suffering from that restriction and frankly bed and breakfasts are not the only use that's being made in single family areas where the fire protection is inadequate. There are daycare centers, there are bakeries, there all kinds of home occupations. Individually many of these don't use necessarily a substantial amount or significant amount more, but cumulatively the impacts of adding all this additional use and burden and exempting it all from standards that you would have to meet for any other government department but we are fiscally independent and we don't get general funds and our rates and fees already don't cover what we need to bring the system up to standards and meanwhile we have all these exemptions going through that are creating a bigger and bigger and bigger gap between where we need to be adequately provide protection and where we are. I'm sorry, am I answering too long? I'll stop.

Mr. Hiranaga: No, I fully understand what you're saying.

Ms. Kraftsow: And my Director is here now.

Mr. Hiranaga: I have more questions but I'll yield the floor to other commissioners if they have a question for the Department of Water Supply.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Can you explain to me why the Department of Water Supply is the one taking the lead on this rather than the Fire Department because I think – aren't there ways of fighting fires that need heavy use of water?

Ms. Kraftsow: I wouldn't say that we're taking the lead on it. There will be some changes to who's reviewing what coming up which my Director can go into further but in the meantime basically how it's been in the past which I can address is that we review a project to determine does it look like our system can fight the fire? Say, you know, say you put in a sprinkler, yes, you have a much smaller chance of a fire destroying the building and a much smaller chance of loss of life. However, if somehow that fire gets past the house that has the sprinklers, you have no chance if there's nothing – if the system's not adequate of protecting the next property over or preventing the spread of the fire. And also, years ago when this issue had come up the Fire Department used to actually required less, seemed to be requiring less stringent conditions and that was in part because they hadn't realized at that time that there were so many areas that didn't even have adequate residential fire protection. And so I think when the Fire Department does take over you may see, you may find that ends up getting equally strict or more strict.

Mr. Hedani: Director Eng, do you have any comments you'd like to offer?

Mr. Jeffrey Eng: Yes, I do. Thank you. Chairman Hedani and Commissioners, yes in response to our requirements, our responsibilities for fire flow to satisfy our flow requirements.

Mr. Hedani: Jeff, could you use the microphone?

Mr. Eng: Yes, certainly. Currently that is our responsibility when it comes to building permits to review for proper fire flow protection. Now in this particular case it appears like that isn't really the issue but if we want to look at more broader general basis that will be coming I think in the future.

We are working with the Council and with the Fire Department to really transfer our responsibilities for fire flow reviews for building permits. As far as subdivisions go we'll still take a look at those initially to make sure that initially the proper size infrastructure is constructed.

So in this particular case again it's not really an issue of fire flow per se. I think I heard a question, I have a great secretary so she told me things were happening down here but there was a question regarding if water calcs had been submitted to our department. We have not received them so we haven't had a chance to see them. You know, but I think there has been some correspondence that the calcs were submitted to the Planning Department. So we're hoping we can see those soon. So does that answer your question? Again, eventually this is going to be in the hands solely of the Fire Department.

Mr. Hedani: Any additional questions for the Water Department at this time? Commissioner Shibuya.

Mr. Shibuya: I wanted to find out where the hydrants were located on Exhibit 1 and what size?

Mr. Eng: Yeah, I looked at our fire protection map. There's a standard fire hydrant situated right in front of the property and there is a 8-inch water line in front of the property also. So really again, in terms of fire protection for this particular applicant, it most likely isn't an issue.

Mr. Hedani: Any additional questions for the department? Commissioner Hiranaga.

Mr. Hiranaga: So just to clarify, your position on B&B applications in ag districts is that they meet residential fire flow standards?

Mr. Eng: Yes, we're still trying to resolve that but that is our preference.

Mr. Hiranaga: So just because you're in an agricultural district and you have a farm dwelling that meets agricultural district fire flow standards there may be an issue if it does not meet residential fire flow standards.

Mr. Eng: Yes. There was a time that even the Department was looking at these applicants as potentially commercial, income producing which would have been even a greater fire flow requirement. But we believe we can have minimally residential fire flow requirement of a 1,000 gallons per minute and that is currently what the Fire Department has amended in their Fire Code. This is something that we currently have in our rules which we will be codifying. So that is our, you know, of our interest is to have minimum residential because some of these properties may be fairly large dwellings or properties in the future and we want to make sure that we can address the size of those structures.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: One last question for the department. What is the minimum water line size – what are the minimum requirements for residential fire flow protection?

Mr. Eng: Well, right now there is a 8-inch and that would be probably satisfactory to meet residential. That's why in most subdivisions you'll see 8-inch water lines.

Mr. Hiranaga: What is the minimum? Like a 6-inch line allowable?

Mr. Eng: You know, that's a possibility. We'd have to take a look at that. But, clearly like a 4-inch line that you see in a lot of agricultural areas would not be satisfactory.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: You mentioned 8-inch line but that's a feeder line. The one that connects to the house is 5/8 inch. Also, the standpipe, what size is that and what psi?

Mr. Eng: I don't have the pressure at this point. I can look that up for you.

Mr. Shibuya: ...(inaudible)... a thousand, you know.

Mr. Eng: Yeah, I believe there is adequate pressure at the site, but if you'd like me to follow up on that I'll do so.

Mr. Shibuya: Thank you.

Mr. Eng: I think there's a full size hydrant though, it's not a standpipe as I recall, when I looked at the fire protection map.

Mr. Hedani: Any other questions for the department? Thank you very much Director.

Mr. Eng: You're welcome.

Mr. Hedani: Any additional questions for staff at this time? Commissioner Hiranaga.

Mr. Hiranaga: I do have several more questions and I noticed that we're at 12:05 and since we did not have our morning snack period, I'm really, really hungry and it's making me grumpy. So rather than prolong beyond the 12:00 noon period, I'd like to request a lunch recess.

Mr. Hedani: My apologies for not providing the snacks this morning. I was on the list but I had – and the guavas weren't my idea. That was actually brought by someone else that was just being nice, so I'll bring two snacks for the next item on my rotation. If there's no objection then we'll go ahead and take a break for lunch or do you want to press on at this time? Commissioner Starr.

Mr. Starr: Yeah, I will not be able to come back after lunch. I would prefer if we could deal with this now.

Mr. Hedani: Okay, commissioners? Commissioner Hiranaga.

Mr. Hiranaga: Okay, I've got about four questions. I don't know how long these answers are going to be from staff. Why does the Planning Department believe that a B&B application is exempt from the SMA process?

Mr. Hedani: Director.

Mr. Hunt: If there's no ground disturbance or any kind of trigger then we would believe that simply operating a B&B shouldn't have any impacts to the coastal resources.

Mr. Hiranaga: One more question.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Why does the Department of Health not require conversion of the existing cesspool to a septic system? And does the Department of Health address this?

Mr. Hunt: Sometimes they have –

Mr. Hiranaga: Can I just – because I know the new EPA guidelines require that all commercial uses convert to septic systems and basically this is a commercial use in a residential area so I'm just curious why the Department of Health do not require that.

Mr. Hunt: Joe, do you have any clarification on the Department of Health.

Mr. Prutch: The only thing I have from Department of Health and I know the applicant's responded as well, is at first they just wanted a site plan showing where the wastewater disposal system is. She did that. And then I believe in a second letter, second conversation, they asked for – they knew it was cesspool and they asked for a cesspool information sheet be filled out by certified licensed person to do. So she submitted that to Department of Health. Department of Health said, okay, we're fine. So as far as I know from Department of Health they did not make any comments to require septic and I'm not sure why they would not do that.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: DOH is responsible for enforcing Federal EPA guidelines? Is that the agency?

Mr. Prutch: Yes, they would be the ones.

Mr. Hedani: Additional questions for staff? Commissioner Mardfin.

Mr. Mardfin: This is a minor, picky one, but on page 3 of your report.

Mr. Prutch: Did I spell something wrong?

Mr. Mardfin: Well, I don't know. About half way down, after the a, b, c, d, e, you have a paragraph and the last sentence of that paragraph says, the County Planning Commission with the concurrence of the commission may extend the time limit and I don't know what you meant. I think you might mean the County Planning Director with the concurrence with the commission.

Mr. Prutch: I think that's with concurrence of the Land Use Commission. Because this is taken from the State HRS 205, they're referring to the commission as the Land Use Commission. We're the planning commission.

Mr. Mardfin: Okay, thank you.

Mr. Prutch: Any other questions for staff? Commissioner Hiranaga.

Mr. Hiranaga: I'm just trying to understand why a conditional permit is not required. Is there a change in procedure now?

Mr. Prutch: Well, with the new bed and breakfast ordinance that was adopted a bed and breakfast is now, can be a permitted use in the ag district pending requirement of a special use permit of course for the state ag portion of it and then the bed and breakfast permit can be done administratively by the Planning Department but certain criteria has to be met, under five acres, farm plan, there's certain criteria that needs to be satisfied. And if she satisfied that, we can approve the bed and breakfast but we can't approve a bed and breakfast without a special use permit because of the state ag first.

Mr. Hiranaga: So the transition period is over? Because I know previous applications in ag district required special use permit and a conditional permit. You said you were in transition. So the transition is over?

Mr. Prutch: I'm not sure exactly what you mean by transition but there were – definitely there have been previous pending special use permits, conditional permits for bed and breakfast, TVR type uses. Since this new bed and breakfast ordinance was adopted, there's some of those that have fallen into qualifications of a bed and breakfast and rather than go the Conditional Permit route which we all know can be quite lengthy, they can now go the bed and breakfast permit route which is supposed to be a little more streamlined and be able to be done a little bit sooner administratively, mostly administratively, but there still is a special use permit process through the state we can't change that.

Mr. Hedani: Additional questions? Director Hunt.

Mr. Hunt: You may be getting conditional permit applications for TVRs that don't meet the definition of a B&B, have too many rooms or the owner isn't on site or it's a manager on site or they don't meet the farm plan requirements, who knows. I believe we tried to contact– I believe we contacted all the conditional permit operators or pending applications and so some of them have switched over but not all of them can or not all of them have elected to.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, we approved a special use permit and conditional permit for a B&B on the same road a couple of months ago, so they've withdrawn their conditional use permit application and is being processed under the B&B permit process?

Mr. Hunt: Correct, they were issued a B&B permit after you, after this body approved the special use permit.

Mr. Hedani: Any additional questions? Commissioner Hiranaga.

Mr. Hiranaga: I have a concern regarding your project specific condition no. 5. It appears that the Water Department's concerns have been resolved.

Mr. Prutch: I don't know if it's been resolved as of yet. I think it's still a work in order, but I think Director Hunt has something to say on that.

Mr. Hunt: My interpretation is that Water Department, let me back up, the Planning Department interprets the B&B as meeting fire flow calculations so there shouldn't be an issue regarding that. In talking to the Water Department, my interpretation, I think both of us would like to have that condition removed so that we can deal with it later and it's not pertinent to this particular application. But they've met the fire flow, so the issue moot whether they should meet, should have to meet fire flow or not, in this particular case, we don't need to determine that because they do meet it and you have people in the audience that may not agree with my interpretation.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm wondering why the Department of Public Works requirement or concern regarding gravel entering Haiku Road is not being required to be complied with prior to the issuance of the permit. You're saying they can meet that requirement during the two-year period during operation and it kind of concerns me you don't at least require a driveway apron. They don't have to pave the entire driveway, but I think they should be made to put an apron in.

Mr. Prutch: And they will do something to that extent. Sandy's been real diligent at working with the various departments ahead of time. In fact, she's got quite a bit of stuff already accomplished before even coming here today. One of the things was working with Miyamoto was the idea that the driveway needed to be paved in order to keep gravel from the gravel driveway from coming out onto the public right of way. And then in discussions with Mike, Mike came down to the point well, the main point is to keep gravel from going onto the highway. However that can be done, whatever she can propose that can be done to accommodate, I believe Mike, I'm speaking for him right now, he can change it if he wants to but his idea was if she can put an apron, concrete apron or at least some kind of pavers or some kind of landscape ...(inaudible)... something that will keep the car's gravel from the tires on her property and not out on the highway or on the roadway. So she has been works with Miyamoto and I believe that's something we would make conditions of the bed and breakfast since it pertains to the bed and breakfasts.

Mr. Hedani: Deputy Director Miyamoto, any comments?

Mr. Miyamoto: Thank you Mr. Chair. Yes, we have been in contact with the applicant and in trying to keep the area in character of, you know, the surrounding ag use, we thought maybe concrete and asphalt might stick out a little, and then you know, we've been discussing with the applicant other landscape alternatives that could help prevent these migrating gravel from leaving her property and we've looked at pavers, talked about pavers or some kind of compacted system. So we're working with the applicant to resolve that issue at this point.

Mr. Hedani: Any additional questions for staff? Commissioner Hiranaga.

Mr. Hiranaga: So that issue would be resolved prior to the issuance of the B&B permit?

Mr. Prutch: I'll defer over to Hunt.

Mr. Hedani: Director Hunt.

Mr. Hunt: You've got a dual process going on here. The SUP does speak to agencies not being subject to an unreasonable burden. We don't believe as administrators that we should put all these conditions on agencies at the SUP permit. We're going to address all these at the B&B including the water situation. So what we're suggesting is the SUP be looked at as impacts to agriculture because that's why you need an SUP, it's in the agricultural district. And any of these agency comments unless they create an unreasonable burden would just be addressed administratively. To be up front we're probably going to be looking at kind of a three-tiered approach. One is where you have to do it prior to operating and the second one is you have to do it prior to your first renewal and this is similar to what Council has done on a number of them. They had given them a year or two or three to operate, get some money and then use that money to put improvements in that are required by agencies.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just another question. You mentioned allowing the Director to extend the B&B permit, will you be providing notice to the surrounding land owners in that whatever, 300-foot radius or when the extension comes up because you're saying if there's no objections to the extension.

Mr. Prutch: At time of renewal I don't believe a renewal is forwarded out to the 500-foot list.

Mr. Hunt: I don't think the law requires it, but it's a good idea. It's a new system, we haven't gotten that far down the road yet.

Mr. Hedani: Corp. Counsel.

Mr. Giroux: I don't think I was asked directly as far as my opinion about condition no. 1 about the extensions but I would just advise the commission, I'm really hesitant about this until you've actually developed rules for your special use permits because if you look at your SMA rules your rules of extensions are really thorough as far as what you expect from the department and what you expect from the project. So I'm really hesitant. I agree with Jeff that you know, the idea is to get it streamlined but I really encourage you to get your rules for SUPs and to include the extensions in

those rules before you delegate your powers.

Mr. Hedani: Thank you. Any additional questions for staff? Commissioner Mardfin.

Mr. Mardfin: I have a question for Corp. Counsel. If he thinks that condition 1 is maybe jumping ahead of the game would you delete a sentence or two in there or delete the entire condition?

Mr. Hedani: Jim.

Mr. Giroux: Well I think from the second sentence, I believe it should say that you know you should file a timely extension and that the planning commission shall review the approval.

Mr. Hedani: Okay, additional questions for staff? Commissioner Shibuya.

Mr. Shibuya: I'm concerned for public safety at this point in time. On item no 4, you're talking about some insurance policy of \$1 million. That's to hold the county harmless of any personal liability problem, right? And the other aspect is the excess routes or accessibility of emergency services such as fire protection and emergency medical. What are the time limits and how are these accesses available on the roadways that are to this property?

Mr. Hedani: Joe.

Mr. Prutch: I mean I do know, as you mentioned earlier, someone mentioned, there are two fire hydrants adjacent to the property. I think one's right on Haiku Road, the other one's behind the property. Fire station is in Paia. I'm not sure exactly how far. I don't think it's too far, five miles approximately. What other issues safety wise?

Mr. Shibuya: Medical services, emergency medical, like ambulance.

Mr. Prutch: I mean as far as getting on her property I know she's –

Mr. Shibuya: No, getting to the property. Where would it be accessed from Pukalani? Kula Hospital? Central Maui?

Mr. Prutch: I'm not exactly sure where they would come out from. If it's an emergency there's only a few choices. Would it be Kula or would it from here?

Mr. Shibuya: And the roadway standards are actually ag standards or are they rural standards or are they urban standards?

Mr. Prutch: I can ask Mike Miyamoto on that what the roads are? Haiku Road. You know the standard on that roadway?

Mr. Hedani: Mike.

Mr. Miyamoto: I'd have to check with staff to find out in this particular area it is.

Mr. Hedani: Any additional questions for staff? Commissioner Hiranaga.

Mr. Hiranaga: So are you amending your project specific recommendations from what's presented to us in writing here? I know you mentioned something about the extension and possibly disregarding item no. 5.

Mr. Prutch: Yeah, we are asking for an amendment. The only amendment is to delete condition no. 5 so that we can accommodate the water and other agency's comments in the bed and breakfast permit. But condition no. 1 we're proposing as written although James Giroux has brought up some comments that maybe you guys would like to discuss and remove that if you see so.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'd like to see it moved along to the Director. I think we should listen to Corp. Counsel about in Condition No. 1. As maker of the motion I don't think I can offer the amendment but someone else would.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I move that we amend Condition 1 as follows, the first sentence would stay the same. The second sentence would be changed to: The planning commission shall review said extension.

Mr. Hedani: Is there a second?

Mr. Starr: I'll second it.

Mr. Hedani: It's been moved and seconded to amend Condition No. 1 as was stated. Discussion?

Mr. Hiranaga: Can we hear the amendment?

Mr. Mardfin: I'll read it again.

Mr. Hedani: I'll get it. The recommendation would be for Condition No. 1, the first sentence would remain the same, and the second sentence would read, "that the planning commission shall review said extension." Discussion? Commissioner Starr.

Mr. Starr: I just wanted to ask Mr. Giroux if that works.

Mr. Hedani: Jim.

Mr. Giroux: Yeah, that will work and hopefully within the two years we'll actually get rules and then we can start delegating the powers.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: Sorry. You said, replace, "Director of Planning" with "planning commission."

Mr. Hedani: The planning commission would review said extension.

Mr. Hiranaga: Otherwise, the planning commission may approve said extension.

Mr. Hedani: No, the planning commission shall review said extension. Joe.

Mr. Prutch: If I can add. We have a standard condition for these extensions. I can just replace this condition with the standard condition. All I did was change it around a little bit to add the Director of Planning as a possible approval. I can revert it back to the original standard condition that only says the commission shall approve extensions.

Mr. Hedani: Is there any objection to that? Commissioner Hiranaga.

Mr. Hiranaga: I would prefer language to SMA extensions. That the planning commission can waive their review if they so determine versus having to review every extension.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I would like that too. However, we did rule making for that and then I think, unless we do rule making I think that's maybe shaky ground.

Mr. Hedani: Additional discussion?

Mr. Hiranaga: So what is the language, I'm sorry.

Mr. Hedani: You want to repeat that's in the standard condition Joe, since that's your suggestion?

Mr. Prutch: Well, unfortunately I don't have a standard condition with me because I replaced it with this one. It essentially, as Mardfin said, the first sentence stays the same. The second sentence actually just takes out the Director of Planning part and says that a extension shall be approved by the planning commission.

Mr. Starr: Mr. Chair we have an amendment on the floor.

Mr. Hedani: The amendment on the floor was amenable to a friendly amendment, but if you just want to vote on the amendment as we read it, we can proceed along those lines as well. I just want to dispose of this because I'm getting really hungry.

Mr. Mardfin: Since we don't have the specific wording from the planner, I think my amendment that met the needs of our Corp. Counsel is sufficient. That the whole second sentence be deleted and be replaced by "the planning commission shall review said extension."

Mr. Hedani: Okay, we've beat this one to death. Director Hunt.

Mr. Hunt: Rather than trying to add language. I just want hopefully it's clear that if you get rules that allow you to waive it you're okay so that we don't take a strict interpretation of this condition. For the record, I'm getting all head nods and no signs of negative.

Mr. Hedani: Additional discussion on the amendment. The amendment on the floor is the revised condition no. 1 to keep the first sentence the same and to have the second sentence read that the planning commission would review said extension. All those in favor signify by saying aye. Opposed nay.

It was moved by Mr. Mardfin, seconded by Mr. Starr, then

**VOTED: To Amend Condition No. 1, as the First Sentence to Remain the Same, and the Second Sentence be Amended to Read, "that the Planning Commission Shall Review Said Extension."
(Assenting - W. Mardfin, J. Starr, K. Hiranaga, B. U'u, J. Guard, D. Domingo, W. Shibuya, L. Sablas)**

Mr. Hedani: Carried. Thank you. Any additional discussion? Joe, one question. We've heard testimony this morning that there's been litigation in regards to fire flow and that the utility was held liable in the Honolulu case because of a higher duty of standard safety of the guests that might not be aware of a condition. From your perspective, as the applicant met that standard?

Mr. Prutch: In talking with – I did have some discussions with the Water Department. Haven't spoken to Fire. I know Sandy's had the Fire Department out to your property and actually had them bring one of their fire trucks out to her property and she can attest this that she had them drive up the driveway, make sure they can get in and out of the property and right next to the property and what she told me is when the Fire Department came out, for one, they can get their trucks on and off the site easily and for two, they said the fact that you have fire hydrant out front and you've got one in the back we should have no problem fighting a fire that exist. I don't think the house is sprinklered or anything like that and also too, according to her fire flow calcs she had done already, it looks like the fire flow calcs says she has approximately 1,500 gallons per minute of water.

Mr. Hedani: So from my perspective it's adequate?

Mr. Prutch: From my perspective it's adequate but I'm not Fire and Water, so I don't know what exactly the gallons per minute is required. But she has 1,500 and what Jeff Eng said earlier saying that a 1,000 gallons per minute would be adequate for residential standards and she's definitely well above that.

Mr. Hedani: Thank you. Any additional questions? Commissioner Shibuya.

Mr. Shibuya: I just want to point out here in the Paia-Haiku Community Plan of 1995 paragraph 10 it says and I quote, "discourage approvals or special permits in state agricultural and rural district areas; a) necessary to serve the immediate community in remote areas; b) supportive of agricultural uses; or c) needed for the use of or distribution of locally produced products and services that otherwise do not adversely affect the environment surrounding the agriculture uses and public

safety.” I read through the entire plan and there is no statement in support for bed and breakfasts and so I’m very concerned that we are now applying commercial type of standards on operation with the level of services particularly on emergency services, both the access for fire trucks or fire vehicles and medical emergency vehicles up this agriculturally standard type of access routes to this commercial property. And I’m very concerned on that. I don’t care if we protect it by a no fault, hold harmless for the County of Maui we are still on the hook as far as I’m concerned because someone got hurt because we approved this and that’s my concern. Thank you.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I just want to say for future applicants, my opinion that they must meet the residential fire flow standards as required by the Department of Water Supply and if you are attempting to apply for a B&B permit in agriculture areas which provide fire protection for only agricultural district standards you’re going to have a problem with me because you are housing people for residential purposes and not agricultural purposes.

Mr. Hedani: Additional discussion? Director Hunt.

Mr. Hunt: I just wondered if we’d give the Water Department an opportunity to comment on our proposed deleting condition no. 5, are you guys okay with that?

Mr. Hedani: Director.

Mr. Jeffrey Eng: Thank you Mr. Chairman. So currently you’re deleting your original condition no. 5, so all regulations will apply to this?

Mr. Hunt: We would address it at the B&B level is what we’re suggesting.

Mr. Eng: Okay, that would be fine at this time. As long as we have an opportunity to discuss it and resolve it. One thing I want to point out though is that I did receive the fire flow and domestic flow calculations from Ms. Kraftsow. One thing that is excluded and that could impact the water service or the meter is that irrigation flow was not included in the calculations. So we would like to review that besides these. Thank you.

Mr. Hedani: Any additional discussion? Ready for the question? Question on the floor is for approval of the staff recommendation as amended. Discussion? All those in favor signify by saying aye. Opposed nay.

It was moved by Mr. Starr, seconded by Ms. Sablas, then

**VOTED: To Approve the State Land Use Commission Special Use Permit with Conditions, as Amended.
(Assenting - J. Starr, L. Sablas, K. Hiranaga, B. U’u, J. Guard, W. Mardfin, D. Domingo)
(Dissenting - W. Shibuya)**

Mr. Hedani: One nay. Motion is carried. Thank you. We're going to take a one-hour break for lunch. We'll be back at 1:30 p.m.

A recess was called at 12:30 p.m., and the meeting was reconvened at 1:30 p.m.

Mr. Hedani: Meeting of May 26th is back in session. The next item that we have on the agenda under Item C-1, Communications is Resolution agreement between the County of Maui and Andrew Castellini for a Notice of Violation for activities within the Special Management Area without a permit for property located at 213 Hoolawa Road, TMK: 2-9-003:002, Haiku, Island of Maui. Trish Kapuaala will be handling this case. Go ahead Trish.

C. COMMUNICATIONS

- 1. Resolution Agreement between the County of Maui and Andrew Castellini for a Notice of Violation for activities within the Special Management Area without a permit for property located at 213 Hoolawa Road, TMK: 2-9-003:002, Haiku, Island of Maui. (T. Kapuaala) (originally scheduled for the May 12, 2009 meeting.)**

Ms. Trisha Kapuaala: Thank you. My name is Trisha Kapuaala. I'm a planner from the Zoning Administration and Enforcement Division. This is a 2005 request for service. So actually we've been working with this responsible party for a very long time. There were six originally used as transient vacation rentals dwellings structures on this property and after numerous attempts for compliance, we ended up issuing two notices of violations, one for Title 19. Violation of Maui County Code Title 19 and one for violation of the Special Management Area Rules for the planning commission because there was no assessment or no permits issued.

The property owners has brought the property into complete compliance and therefore we have this settlement agreement before you. The Title 19 resolution agreement already was signed by the Mayor and that resolution was for \$4,000 and what you have before you and you have the authority to approve or deny is a resolution agreement for the total of \$10,390. And I'm available for any questions.

Mr. Hedani: Questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: When you said they're in total compliance that they're still operating or they stopped operating?

Ms. Kapuaala: Yes sir, they've stopped operating. There's no longer transient vacation rental business on the property and each one of the structures are no longer habitable. They're used as sheds.

Mr. Mardfin: Do you check periodically?

Ms. Kapuaala: This resolution agreement allows us the ability to access the property any time.

Mr. Hedani: Any additional questions for staff? Commissioner Mardfin.

Mr. Mardfin: It's a settlement agreement so I take that the amount of money has been negotiated down somewhat from what the original position of the county was?

Ms. Kapuaala: Yes sir. Because there were six violations we imposed the maximum penalty of \$10,000 each so the initial civil fine was \$60,000 with \$1,000 a day per violation, so \$6,000 daily fines per day past 30 days. So as you can see it's a considerable lowering of the amount we initially imposed and this is one of our first negotiations for settlement actually. So since then we've – the Planning Director has been advising us to be more firm. You know this was something that –

Mr. Mardfin: Are you comfortable with it?

Ms. Kapuaala: Yes.

Mr. Hedani: Is Mr. Castellini here? Are there any comments that he would like to offer or is the settlement acceptable to them?

Ms. Kapuaala: Mr. Don Smith is here representing Mr. Castellini.

Mr. Hedani: Could you step to the microphone please and identify your name for the record.

Mr. Don Smith: Yes, my name is Don Smith and I'm representing Mr. Castellini. We are perfectly in agreement with this and Mr. Castellini has already paid the fine.

Mr. Hedani: Any questions for Mr. Smith? Seeing none, thank you very much. Commissioners, what's your pleasure? Commissioner Mardfin?

Mr. Mardfin: What is the Planning Department asking for, approval of this? I move to approve.

Mr. Shibuya: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner Shibuya for approval of the department's recommendation for settlement. Any discussion? Seeing none, all those in favor signify by saying Aye. Opposed nay.

It was moved by Mr. Mardfin, seconded by Mr. Shibuya, then

**VOTED: To Accept the Resolution Agreement Between the County of Maui and Andrew Castellini.
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, B. U'u, J. Guard,
D. Domingo, L. Sablas)
(Excused - J. Starr)**

Mr. Hedani: Carried. Thank you. Corp. Counsel.

Mr. Giroux: Just, as far as where it says, "Chairperson" can you just update that to Mr. Hedani?

Ms. Kapuaala: Shall we execute another counter part?

Mr. Giroux: Probably be the cleanest.

Ms. Kapuaala: Mr. Hedani, would it be okay if you would come by our department another day to sign a counter part?

Mr. Hedani: Sure.

Ms. Kapuaala: Or I could get one ready right now and come down. Do you have other business to take care of here?

Mr. Hedani: Only fishing once we're done here.

Ms. Kapuaala: I'll be right back. Thank you. Thank you very much.

Mr. Hedani: Thank you very much Mr. Smith. Action minutes of May 12th and regular meeting minutes of March 24th.

D. ACTION MINUTES OF THE MAY 12, 2009 MEETING AND REGULAR MINUTES OF THE MARCH 24, 2009 MEETING

Mr. Hedani: Are there any additions, corrections? If not, the minutes will stand approved as circulated. Director's Report, Director Hunt.

E. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

Mr. Hunt: The first item is Planning Commission Projects and Issues that you could raise and staff can either respond immediately or a lot of times we'll come back later with more information.

Mr. Hedani: We don't have any issues.

2. Discussion of Future Maui Planning Commission Agendas

a. June 9, 2009 agenda

Mr. Hunt: The next item involves your future planning commission agenda. This is for June 9th. You've got a Special Management Area Use Permit for the South Maui emergency ambulance station. You have a Special Management Area Permit for the Hawaii Fueling facilities. This is a above ground jet aircraft fuel storage tanks and pumps. And you have an amendment to Condition No. 4 of the SMA for the Maluaka project in Makena. This is a Dowling project. They're proposing to reduce the density from 71 units down to 13. And you have a State Land Use Commission

Special Use Permit for a bed and breakfast. This is similar to what you reviewed today that's on agricultural land that's why it's coming before you. You have a communication regarding selection of a hearings officer for the Martin appeal of the Planning Director's decision to not process their Special Management Area Assessment...(inaudible - changing of tape)... proposed will be bringing to you situations and comments that we've been hearing from the agencies and suggestions. First of all, we'll be raising issues on some of these comments and then suggestions on how to deal with them. I'm going to ask Clayton to actually schedule that before the Ronald and Barbara Wilbur application. Usually we do all the public hearing items together but maybe we can just rearrange it for that one item. That's it for the agenda for the June 9th. Any questions on that?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Item no. 3, Keaka LLC, seems to be a substantial change. The applicant's going to make a presentation?

Mr. Hunt: I'm not sure. I know there's a fairly lengthy staff report. If you want the applicant to make a representation, we can ask them to.

Mr. Hiranaga: I mean 71 units to 13 single family dwellings, I think that's a substantial change.

Mr. Hedani: At least be available for questions.

3. **EA/EIS Report**
4. **SMA Minor Permit Report**
5. **SMA Exemptions Report**

Mr. Hunt: You next three items involve the EIS/EA Report, the SMA Minor Report and the SMA Exemption Report. This is your opportunity to ask questions or ask for additional information regarding those reports.

6. **Special Maui Planning Commission Meeting on the Maui Island Plan Review - June 2, 2009, 1:30 p.m., Helene Hall, Hana, Island of Maui.**

Mr. Hunt: The next items involves the special planning commission meeting on the Maui Island Plan. This is in Hana on June 2nd. There's a site visit scheduled at 10:00 a.m., and because of the Sunshine Laws we have to actually agenda the site visit itself. So the first stop, we will be leaving from Helene Hall and the first stop is at the Hamoa Beach bus stop and then we'll go to the National Botanical Garden and then we'll go to the Hana Cultural Center. At this point, we're trying to get one van so everyone can fit in one van so that no one feels excluded, and people, Jonathan and Ward who live out there can show us the sites as we go around or raise issues. So hopefully we can all get in one van, can tell us about the sites that we're seeing. We need to be careful not to discuss issues and certainly not make any conclusions or deliberations.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: The plan is to start at 10:00 in the morning. We'll go to the south, through town and to the south. Basically the purpose of this from my point of view is just to point out everything that's around, so whenever you're dealing with Hana you'll have an orientation for it. It's not just focused on particular issues. But I have something like a hundred places I want to, this is this and this is this, this is this, and this is this. The first stop will be at(inaudible)... we're going to go south to the ...(inaudible)... church, come back go to the north part of town as far as from Hana Gardens. They normally charge admission to that but I've been told by the director that allow us in for free and then we go back to basically, stop at the Hana Cultural Center which is right by Hana Bay and I'm the treasurer there and I'll allow you guys to come in for free also even though we normally charge for that. But I would like to get a feeling of how many people are likely to be there? How many people think that they'll get there at 10:00 so they can be part of this? One, two, three, four, five, six, seven.

Mr. Hunt: I'm driving.

Mr. Mardfin: Eight, Nine. Kenny was saying he might be interested.

Mr. Hunt: Jonathan I think –

Mr. Mardfin: I think Jonathan may skip. I'm not sure. He's not sure whether he can get in or not. Paihi Bridge has been delayed for a week. They're saying it's going to be open on the 1st, but if it's delayed for the second he's not going to drive all the way around. So I don't know, can you get a 10 or 11 passenger van then?

Mr. Hunt: Yeah, right now we have a 15 passenger van.

Mr. Mardfin: Okay, then we've ...(inaudible)...

Mr. Hunt: And any members of the public that show up that want to take the tour would be invited.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Director Hunt, this question, if you're taking that van from Central Maui will the commissioners be available to run, ride on that to Hana?

Mr. Hunt: You could run along side.

Mr. Shibuya: Or ride.

Mr. Hunt: The van at this time, I think we have arrangements to pick up the van in Hana. So I think we're just borrowing one. It's through some non profit.

Mr. Hedani: Is there carpooling available for anybody that needs a ride Jeff?

Mr. Hunt: I think there's at least one county vehicle going out there. It may be somewhat full because we got to take all our PA equipment, etc. There may be a room for one seat or something. I'm not sure.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I do suggest you carpool in some fashion. Earlier today I gave you each a rules of the road. If you're the driver read that top part, for the passengers, read the bottom part and the back page so it will occupy your time. It's likely to take you two to three hours to drive in. And so the passengers can keep themselves happy by looking for mile markers and looking at various things on the side ...(inaudible)... I do suggest you carpool. If you get car sick, I'd suggest you be the driver.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess I'm a little surprised that staff's not arranging carpools because I remember when we went out to Lahaina, they made sure that whatever commissioners wanted to catch a ride they'd make seats available. So you're saying that we should all find our own way out there be it individually or –

Mr. Hunt: I think what I was really saying is we hadn't really gotten to the point of a carpool. I shouldn't have been interpreted as saying no way, that's a stupid idea. It's more like a great idea. I'm surprised we hadn't thought of it yet. So how about if we get back to you with some kind of carpool information.

Mr. Hedani: So if you need transportation to Hana contact Jeff's office.

Mr. Hiranaga: You can send out a broadcast email.

Mr. Mardfin: Again, to get there for a 10:00 thing you're probably going to have to leave about 7:30 or so maybe a little earlier.

Mr. Hedani: Anybody who takes their life into their hands I have an extra seat open in my car and I'm going to try to beat Ward's time of an hour and a half. I can meet you here. Our next regular meeting date is June 9th at 9:00 a.m.

F. NEXT REGULAR MEETING DATE: June 9, 2009, 9:00 a.m.

G. ADJOURNMENT

The meeting was adjourned at 1:50 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Bruce U'u, Vice Chairperson
Donna Domingo
John J.B. Guard IV (in attendance @ 9:30 a.m.)
Kent Hiranaga
Ward Mardfin
Lori Sablas
Warren Shibuya
Jonathan Starr (excused at 12:30 p.m.)

Others

Jeff Hunt, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works